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Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

CAROLYN BRITTON,

Petitioner,

vs.

DOUGLAS SHULMAN, COMMISSIONER OF THE INTERNAL REVENUE SERVICE,

Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

CAROLYN BRITTON, MBA, CMPE
10 Drummer Boy Way
Lexington, MA 02420-1220
(781) 640-5239

QUESTIONS PRESENTED

SMLLC means single member limited liability company.
SMO means single member owner.

1. Under Subtitle C of the Internal Revenue Code, which governs employment taxes, whether the SMLLC who paid the wages is liable for the employment taxes thereon as Congress intended or exempt from taxation under the check the box regulations, thereby making the SMLLC's SMO 100% liable for the entire amount of the employment taxes owed by the SMLLC, not just the trust fund portion?

    a. Specifically, are the check the box regulations that shift the employment tax liability from the SMLLC to its SMO valid where the SMLLC continues to exist under state law?

    b. Is the SMO liable for the employment taxes in this case?

2. Whether the SMLLC and the SMO is a single taxpayer or person to whom notice is given, as the Tax Court expressly found at App. B, page 6a?

3. If the SMO is liable for the employment taxes at issue in this case, under IRC § 6203 and Treas. Reg. § 301.6203-1, does an assessment made against the SMLLC only suffice against the SMO so that this administrative collection action can proceed against the SMO only, in her personal capacity?

4. If the SMO is liable for the employment taxes at issue in this case, under IRC § 6303, does Notice and Demand sent to the SMLLC only or to the SMO in her corporate capacity as the SMO of the SMLLC only, suffice as Notice and Demand against the SMO in her personal capacity, where the content of the notice makes no mention of the SMO's potential personal liability? See the CP161 Demand Notices at App. H, pages 53a to 55a and pages 60a to 62a.

5. Whether the Tax Court had jurisdiction to enter a judgment against Carolyn Britton in her personal capacity after it changed the caption of the case to reflect that Carolyn Britton was only before the Tax Court in her corporate capacity as the SMO of the LLC. The Order changing the Caption is at App. E, page 22a.

6. Under IRC § 6631(k)(2)(A) and Treas. Reg. § 301.6331-4, which provides protection to a taxpayer against enforced administrative collection actions while a proposed installment agreement is pending, must a taxpayer expressly propose a specific amount or provide financial information to the IRS when <u>first</u> proposing to enter the installment agreement, or may these details be provided after the installment agreement is proposed and after IRC § 6331(k)(2)(A) protection attaches but before IRS acceptance of the installment agreement? In short, there is a difference between the quantity and quality of information required at the pending stage and at the acceptance stage. Our proposed installment agreement is at App. I, page 87a; its attached CP504 notice is at page 58a.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page, except for respondent Medical Practice Solutions, LLC, who is not aggrieved by the lower Court's decisions in its favor that exempt it from taxation.

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Petitioner Carolyn Britton respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit is unreported; it is reprinted in the Appendix at App. A, page 1a. The opinion of the Tax Court is reported at *Medical Practice Solutions, LLC. v. C.I.R.*, 132 T.C. No. 7; 132 T.C. 125 (2009); it is reprinted at App. B, page 2a. The unreported Administrative Decision of the Internal Revenue Service (Notice of Determination) is at App. C, page 12a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the First Circuit was entered on August 24, 2010. The Court of Appeals denied a timely filed petition for rehearing and petition for rehearing en banc on November 15, 2010 (App. D, pages 21a). This petition is timely filed within 90 days of November 15, 2010 as permitted under Rule 13.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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STATEMENT OF THE CASE AND TAX COURT JURISDICTION

In March 2006 and June 2006, Respondent Medical Practice Solutions, LLC (LLC) paid wages to its employees, deducted the appropriate amounts from those wages, and paid the net pay to its employees. The relevant statutes governing the payments of wages and employment taxes are the clear and unambiguous employment tax statutes at IRC § 3101, IRC § 3102(b), IRC § 3111, IRC § 3401(d), IRC § 3402, and IRC § 3403.[1]

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[1] The Commissioner, Tax Court, First Circuit, *Littriello*, and *McNamee* contend that the relevant statutes are the IRC § 7701(a)(1) definition of person, the IRC § 7701(a)(2) definition of the term partnership, and the IRC § 7701(a)(3) definition of the term corporation, which they further contend are all ambiguous and overlapping, which in turn justifies the creation of the check the box regulations under *Chevron* deference. However, these statutory definitions are neither relevant to nor ambiguous on the question of who owes the employment taxes at issue in this case: (1) the LLC or (2) the SMO. This Court held that the IRC § 7701(a)(1) term person was unambiguous in *Chickasaw*, 534 U.S. at 88. The first Courts to interpret the IRC § 7701(a)(2) term partnership when it was first statutorily defined in the Revenue Code of 1954, found that it was an unambiguous term that gap filled the other definitions, such that a partnership is defined as the catch-all gap filler that catches every business entity that is not a corporation, not a trust, or not an estate. See e.g., *Rafal v. Flemming*, 171 F.Supp. 490, 496 (D.C. Va. 1959). Once a business entity is classified as a person for federal tax purposes, further classification as a partnership, or corporation, or trust, or estate is irrelevant for employment tax purposes because employment tax liability is the same for every person and it attaches to the employer, which is defined as the person who pays wages. *Otte*; IRC § 3401(d) (2010). The LLC is not a corporation, Rev. Rul. 88-76; *CFM Buckley/North, LLC v. Bd. of Assessors of Greenfield*, 453 Mass. 404, 407, 902 N.E.2d 381, 384 (2009),

Unfortunately, the LLC failed to pay the deducted taxes over to the federal government as required by law. These deducted amounts are deemed to be held in trust for the federal government, IRC § 7501 (2010), so they are called trust fund taxes. In addition to these trust fund taxes, employers must match the FICA and Medicare portions of the deducted amounts, IRC § 3111, and send it all to the federal government, but for the quarters ending March 2006 and June 2006, the LLC failed to do so, which makes the LLC, not Carolyn Britton, liable for the employment taxes, as this Court held in *Galletti*. *U.S. v. Galletti*, 541 U.S. 114, 115 (2004) ("§ 3403 makes clear that the "employer" that fails to withhold and submit the requisite employment taxes is the "liable" taxpayer," not the owner of the employer.)

When the LLC timely filed its employment tax returns for these quarters, the LLC admitted through its CEO, Petitioner Carolyn Britton, that the LLC owed unpaid employment taxes as reflected on the certified copies of the tax returns at 51a and 56a. Under Massachusetts law, which controls this administrative collection action, Rev. Rul 2004-41, *Progressive Consumers Federal Credit Union v. U.S.*, 79 F.3d 1228, 1235 (1st Cir. 1996), a corporate officer

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and it is obviously neither a trust nor an estate, so by process of elimination, it much be a statutory IRC § 7701(a)(2) partnership, regardless of the number of members or partners. The statutory definition of partnership trumps the common-law definition of partnership which requires two members. Even *McNamee* recognized that common-law definitions cannot be used to create an ambiguity in the Tax Code. *McNamee* at 111.

cannot be personally liable for the taxes shown on a return filed by the business entity, without an individualized assessment against the corporate officer in her individual capacity, *Heritage Bank for Savings v. Doran*, 399 Mass. 855, 861, 507 N.E.2d 690, 693 (1987).

As shown below, there is no such assessment against Carolyn Britton, yet without any precedent in the history of American Taxation and Jurisprudence, both the Tax Court and United States Court of Appeals for the First Circuit is prepared to allow this administrative collection action to proceed against Carolyn Britton in her individual capacity without an assessment against her.

This Court left the successor assessment issue open in the partnership context in *Galletti* because the Commissioner pursued the collection action in Court, where an assessment is not necessary because the resulting civil judgment serves the same purpose as the assessment. *Bull v. U.S.*, 295 U.S. 247, 260 (1935) ("The [IRC § 6203] assessment is given the force of a judgment . . .") However, IRC § 6901(a) (2010) and IRC § 7501 (2010) specifically require an assessment against any person who is successively liable for taxes and administratively targeted for collection. In *Galletti*, the partners were liable under state law for the partnerships debt, but here the SMO is not liable under state law for the LLC's debts. Mass. Gen. Laws ch. 156C, § 22 (2010). *See U.S. v. Galletti*, 541 U.S. 114, 120 (2004) ("Section 6203 speaks of "the liability of the taxpayer" (emphasis in original), which indicates that the relevant taxpayer must be determined.").

In *U.S. v. Galletti*, 541 U.S. 114, 119 n. 1 (2004), this Court reserved judgment on the derivative assessment issue in an administrative collection case, expressly stating the following in footnote 1:

> Because the Government is attempting to enforce the Partnership's tax liabilities against respondents in a judicial proceeding, we do not address whether an assessment only against the Partnership is sufficient for the IRS to commence administrative collection of the Partnership's tax debts by lien or levy against respondents' property. We also decline to address whether an assessment against the partnership suffices to trigger liability against the partners for interest and penalties without separate notice and demand to them.

Under both *McNamee* and *Littriello*, which the Tax Court and the First Circuit purport to follow, there was an individualized assessment against both SMO McNamee and SMO Littriello in their personal capacities, so the Tax Court and First Circuit Judgments that would allow this administrative collection action to proceed against SMO Britton without an individualized assessment against her is clearly unprecedented and expressly contrary to governing law, including the due process clause. U.S. Const. amend. V. See *Littriello v. U.S.*, 484 F.3d 372, 374 (6th Cir. 2007) ("Because the LLCs were "disregarded entities" under the pertinent tax regulations, and not corporate entities, the IRS assessed [SMO] Littriello for the full amount of the unpaid employment taxes for 2000-2002."); *McNamee v. Department of the Treasury*, 488 F.3d 100, 104 (2nd Cir. 2007) ("The IRS, having disregarded WFM-LLC as a separate

entity, assessed those taxes against [SMO] McNamee personally and placed a lien on his property.")

Littriello dealt with a Kentucky LLC; *McNamee* dealt with a Connecticut LLC. Neither case dealt with Massachusetts LLC, which has a unique statutory provision that makes a Massachusetts LLC both a person and partnership, Mass. Gen. Laws ch. 156C, § 63 (2010), regardless of the number of members, Mass. Gen. Laws ch. 156C, § 2(5) (2010). In *McNamee*, the Second Circuit cited Connecticut Statutory law at Conn. Gen. Stat. § 34-301(9) (" 'Partnership' means an association of two or more persons....") (see *McNamee* at 107), for the proposition that a CT SMLLC could not be a partnership, but under controlling Massachusetts law, a MA SMLLC is a partnership. Mass. Gen. Laws ch. 156C, § 63 (2010).

Under IRC § 6301, the Commissioner is required to collect the unpaid taxes shown on the tax returns at 51a and 56a from the LLC, but the Commissioner has failed to do so. Instead of attempting to collect the employment taxes owed by the LLC from the LLC, the Commissioner has concocted a regulatory scheme known as the check the box regulations, Treas. Reg. § 301.7701-2 (2006) and Treas. Reg. § 301.7701-3 (2006), under which, the LLC is exempted from having to pay its own employment taxes because under the Commissioner's scheme, the LLC is deemed to be a disregarded entity for federal tax purposes. Under the Commissioner's scheme, the SMO is liable for 100% of the LLC's unpaid employment taxes, which includes both the trust fund

portion and the matching employer share imposed by IRC § 3111.

The Tax Court Opinion at App. B, page 10a, cites *Kandi v. U.S.*, 2006 WL 83463, *5 (W.D. Wash. 2006) with approval, which held that "employment taxes for a single-member LLC that has not made a check-the-box election [to be taxed as a corporation] begin as a member/owner [SMO] liability and are never attributable to the LLC.")[2]

However, there is no statute that authorizes the Commissioner to exempt the LLC from taxation; IRC § 6301 requires the Commissioner to collect the taxes shown on the returns from the LLC. There is also no statute that authorizes the Commissioner to pursue the SMO for 100% of the unpaid unemployment taxes.

To be clear, under Subtitle C of the Tax Code, specifically IRC § 3101, IRC § 3102(b), IRC § 3111, IRC § 3401(d), IRC § 3402, and IRC § 3403, the LLC is liable to pay its own employment taxes because the LLC is the IRC § 7701(a)(1) person who paid the wages, but through its "check the box" regulations, the Commissioner has impermissibly changed that result so that the LLC is exempt from taxation, and

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[2] The *Kandi* Court went on to say, "This rather fine point serves as the key to this analysis. Petitioner's argument depends on the accuracy of his assumption that in attempting to collect employment taxes from him, the "Service is trying to collect employment tax liability of a single member LLC from its owner." (Pet'r's Resp. 3:13-14.) In fact, the employment tax liability at issue is, and always was, solely Petitioner's." *Kandi*.

the SMO is solely and primarily liable for the LLC's employment taxes.

In the Indian cases that resolved a Circuit split about whether an Indian Tribe was an IRC § 7701(a)(1) person, this Court adopted the Tenth Circuit's opinion that said:

> we conclude that Congress unambiguously intended for the word "person," as used in § 7701(a)(1), to encompass all legal entities, including Indian tribes and tribal organizations, that are the subject of rights and duties.

Chickasaw Nation v. U.S., 208 F.3d 871, 879 (10th Cir. 2000) (Indian Tribe is a person who must pay wagering taxes) *affirmed* 534 U.S. 84, 88 (2001) (Supreme Court resolved a Circuit split saying, "We agree with the Tenth Circuit.")

Because a Massachusetts LLC is a legal entity subject to rights and duties, it follows, clearly and unambiguously, that the LLC is an IRC § 7701(a)(1) person for all federal tax purposes. A Massachusetts SMLLC is both a person and a partnership. Mass. Gen. Laws ch. 156C, § 63 (2010). Because there is no dispute that the LLC paid the wages from its own funds, it is clear under the Tax Code that the LLC was the employer liable for the employer taxes. IRC § 3401(d); *Otte v. United States*, 419 U.S. 43, 48-49 (1974). See also Chief Counsel Memorandum CCM 200114006 (released April 6, 2001) entitled *Collection of Employment Taxes Assessed Under Name and EIN of Single Member Limited Liability Company* wherein the Commissioner candidly concedes at page 7-8:

> In support of this view, Single Member Limited Liability Company is arguably the common law employer. Also, it made payment of wages to the employees of the business and thus could be viewed as the employer under § 3401(d) and *Otte v. United States*, 419 U.S. 43 (1974). Moreover, it made payments or deposits of employment taxes and filed returns using its own name and EIN in accordance with Notice 99-6. This method of reporting and paying employment taxes arguably undercuts the Service's position that Single Member Limited Liability Company is a disregarded entity. A court might view this method of reporting and paying employment taxes as providing support for treatment of Single Member Limited Liability Company as a separate entity for employment tax purposes, notwithstanding the Service's position to the contrary.

This Court has routinely struck down regulations that conflict with the clear and unambiguous mandates of the Tax Code, and it should do so here.[3]

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[3] Regulations that "produce results materially different" from the results intended by Congress have no validity because they "amount to an attempt to legislate." *Helvering v. Sabine Transportation Co.*, 318 U.S. 306, 310-312 (1943); *Helvering v. Credit Alliance Corporation*, 316 U.S. 107, 113 (1942) ("attempted to add a supplementary legislative provision which could only have been enacted by Congress"); *Dixon v. U.S.*, 381 U.S. 68, 74 (1965) ("A regulation which . . . operates to create a rule out of harmony with the statute, is a mere nullity.") Any regulation that conflicts with a federal statute is invalid. *In re Watson*, 161 F.3d 593, 598 (9th Cir. 1998) ("A federal regulation in conflict with a federal statute is *invalid* as a matter of law.")

The trust fund portion of the taxes shown on the tax returns at 51a and 56a was 72.5% of the first quarter total and 73.1% of the second quarter total[4]. Under IRC § 6672, the Commissioner is authorized to pursue the trust fund portion of the unpaid employment taxes directly from the single member owner (SMO) of the LLC, as a penalty, not as a tax. The distinction is important because under the Tax Code, the SMO is never liable for the unemployment taxes under any circumstances. The SMO can only be liable for a trust fund penalty. Because the trust fund portion of the unemployment taxes is only 72.5% and 73.1% respectively, under the Tax Code, the SMO is never liable for 100% of the amount shown on line 6 of the tax returns at 51a and 56a, but that is the amount that the Commissioner seeks from the SMO.

Under the Commissioner's scheme, which operates to subject the SMO to a tax not imposed by the Tax Code, there is a violation of the origination clause because the Commissioner's SMO taxation scheme did not originate in the House of Representatives. U.S. Const. art I, § 7, cl. 1 (Origination Clause).

Because there is no statutory support for the Commissioner's pursuit of Carolyn Britton's assets in her individual capacity, except for the trust fund penalty, which requires a specific 60-day notice dis-

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[4] The trust fund portion is the amount shown on line 3 plus half of the amount shown on line 5d of the Form 941s at 51a and 56a.

closing that fact, which has never been issued[5], it was impossible for us to discern who the Commissioner was targeting for collection: (1) the SMO, or (2) the LLC. Due Process requires that this issue be resolved clearly and unambiguously, so that the intended target of collection has notice. The notices that were sent only compounded the confusion because they impermissibly had two names on them, under conditions, where only one name, the name of the intended collection target, should have been present.

The IRS normally includes two names on its general correspondence with LLCs: a primary name and a sort name showing capacity. IRM 2.4.6.6 ¶ 4 (01-01-2004) *Elements of Writing a Letter* ("two name lines normally print on the formatted letter."); IRM 3.13.2.2 ¶ 6 (07-01-2009) *Primary, Sort, In Care of Names and Name Control* ("Mail going to a domestic taxpayer will carry two name lines:" "always the primary name (legal name)" and "always sort name if present.") However, the IRS should only include one name on administrative collection actions, either the LLC's or the SMO's name, but never both. IRM 5.1.21.9 ¶ 2(09-01-2009) ("Administrative collection actions should not include both the name of the LLC and the name of the SMO. Only the name of the liable taxpayer should be included.") An administrative collection includes CP161s, CP504s, Letter 1058, Letter 3172, and Letter 3193. As explained

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[5] The Commissioner feels that it would be double counting to seek 100% of the unpaid employment taxes from the SMO as a tax and to also collect 72.5% or 73.1% of those taxes, respectively, as a penalty. The three year statute of limitations now bars the Commissioner from seeking a trust fund penalty.

infra, this confusing names and capacity issue has jurisdictional, constitutional, and statutory significance that is case dispositive in our favor.

Tax Returns, LLC Assessment, and Initial Notices

On May 1, 2006 and again on July 31, 2006, Medical Practice Solutions, LLC ("the LLC") timely filed a Form 941, Employer's Quarterly Federal Tax Return, without paying the employment taxes that the LLC self-determined to be due and owing. App. H, 51a and 56a; Addendum 35, 38. The Form 941s at 51a and 56a are certified true copies of the processed Form 941s that show the Document Locator Number (DLN) that was stamped in the upper right hand margin of each tax return during IRS processing.

On July 3, 2006 and September 4, 2006, respectively, the Commissioner assessed the taxes shown on the March 2006 Form 941 and the June 2006 Form 941 against the LLC only, under the Name and EIN of the LLC. See the respective Form 4340s at 102a, A126 and 108a, A131. On July 3, 2006, the Commissioner's computers immediately sent a CP161, Notice and Demand, for the March 2006 quarter to Medical Practice Solutions, LLC at its business address. 53a, Addendum 37 (first page of CP161). The July 3, 2006 CP161 at 53a, Addendum 37 is the statutory Notice and Demand required by IRC § 6303. The July 3, 2006 CP161 at 53a, Addendum 37 has the same document locator number (DLN) stamped in small print in the upper right hand corner as does the Form 941 at 51a, addendum 35 and the Form 4340 at 102a, A126: 17141-161-807-79-6. The DLN proves and maintains the evi-

dentiary link between the Form 941, CP161, and Form 4340 for March 2006. DLN 34141-154-55580-6 proves and maintains the evidentiary link for June 2006 between its Form 941 at 56a, addendum 38, its September 4, 2006 CP161 at 60a, addendum 41, and its Form 4340 at 108a, A131.

Based on the DLN link, there can be no doubt that both the assessment, and the notice and demand were based on and linked to the Form 941s filed by the LLC only, under its Name and EIN only, so there is no paper trail documenting an assessment against Carolyn Britton in her individual capacity.

A closer look at both the Form 941 and the CP161s show that they were all directed to the LLC at its business address in Beverly MA. On February 20, 2008, during oral argument on the Commissioner's failed Motion for Summary Judgment, the Commissioner judicially admitted that the assessments were made against the LLC only, 91a, A74 lines 21-22, and he clarified that there was no assessment against Carolyn Britton in her individual capacity. 91a, A74 lines 1-20; 92a, A75 lines 1-7. 115a-116a; A441-A442.

On August 7, 2006 and again on October 23, 2006, the Commissioner sent out CP504s, Urgent Notices, for the respective two quarters, to the LLC. 58a, Addendum 40; 63a, Addendum 42. These notices contain the same name and address information as the CP161s.

The Installment Agreement Response to the Initial Notices

On August 9, 2006, upon receipt of the August 7, 2006 CP504 Urgent Notice, Randy Britton, JD-MBA, CPA called the number on the CP504 and spoke with an IRS employee named Mr. Coleman, ID 1752615 and requested an installment agreement. 87a, A26. Mr. Coleman instructed us to make a written request to the Cincinnati IRS office because the amount at issue exceeded $10,000. 87a, A26. That same day, the LLC made the written request for the installment agreement at 87a, A26. and attached the August 7, 2006 CP504 at 58a, which included an amount of $19,829.65. The August 9, 2006 letter Medical Practice Solutions, LLC wrote to the IRS said, "Please consider this letter a written request to set up a payment plan of the maximum duration and the minimum due now, permitted by law." 87a, A26.

The August 9, 2006 letter at 87a, A26 expressly referenced and attached the Commissioner's August 7, 2006 letter at 58a, Addendum 40, A310. The August 7, 2006 letter showed a balance of $19,829.65. The interest is set by law; it was 8% at the time, as disclosed at 55a, A303. The maximum duration is also set by law; it is the time left during the 10 year statute of limitations on the collection period that starts when the assessment is made, IRC § 6502 (a) (2010), so it would have expired on July 3, 2016. A303. Because the offer was made on August 9, 2006, there were 119 months left. Using any business calculator or the PMT function in Microsoft Excel®, the specific amount being offered on August 9, 2006 was $241.91 a month for 119 months. When the offer was renewed on January 10, 2007, the offer

included both quarters which increased the present value and decreased the number of periods. According to the Letter 1058, dated December 12, 2006 at A330, the present value to be amortized, including both quarters, was now $40,314.05. Using the same calculation, with N=114 and I=8%/12, the specific amount being offered was $505.99 for 114 months.

On September 7, 2006, the Commissioner responded to Medical Practice Solutions, LLC, acknowledging receipt of the August 9, 2006 letter, stating "We can't consider your request for an installment agreement because we have no record of receiving your tax return(s) for the tax period(s) shown below:

(1) Form 941 for 4th Qtr 2004,
(2) Form 941 for 2nd Quarter 2005, and
(3) Form 940 for 2004.

114a, A148.

None of these tax returns were missing; the Commissioner was wrong. See App. C, page 17a, Addendum 27, where SO Blais writes, "[T]he Representative demonstrated at the hearing that at the time of the request that the business was in filing compliance and was not otherwise precluded from requesting a payment agreement." The Commissioner merely delayed his decision on the merits pending the submission of the three tax returns that he erroneously thought were missing. The Commissioner's request for the allegedly missing tax returns was consistent with the Commissioner's right to ask for additional information so that the Commissioner can decide whether or not to accept a a proposed in-

stallment agreement. Treas. Reg. § 301.6331-4(a)(2) (2010) ("If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information.")

Significantly, the Commissioner did not reject the proposal on the merits via his September 7, 2006 letter, 114a, so, as of September 7, 2006, our offer to enter a payment agreement remained pending. The Commissioner waived any basis for rejecting the installment agreement that was not included in the September 7, 2006 letter, and it is a violation of the covenant of good faith and fair dealing for SO Blais to raise the "specific amount" issue in his May 25, 2007 Notice of Determination, when he did not raise that issue at the April 23, 2007 face to face hearing because we could have easily calculated the "specific amount" of the offer for him during the hearing. Indeed, federal regulations require the IRS to ask for additional information to clarify the terms of the proposed installment agreement offer, if they were not understood by the IRS. Treas. Reg. § 301.6331-4(a)(2) (2010).

The offer remained pending on both December 12, 2006 and on April 23, 2007 because it was neither, accepted, rejected, or withdrawn, when the Letter 1058 (69a) and the Notice of Determination (App. C, page 12a) were respectively issued. Treas. Reg. § 301.6331-4(a)(2). The offer was even renewed on January 10, 2007 (A157-A158), so that it would include both the March 2006 period and the June 2006 period, so there is nothing in the record reject-

ing it. Therefore, the full protection of IRC § 6331 (k)(2)(A) prevented the Letter 1058, Notice of Final Intent to Levy (69a) from lawfully issuing and from lawfully being executed.

However, both SO Blais at App. C, page 18a, addendum 27 and the Tax Court at App. B, page 5a, addendum 5 found that this August 9, 2006 offer to enter an installment agreement (87a) lacked a "specific amount," a purported essential term, so according to them it was legally insufficient to constitute a pending installment agreement within the meaning of IRC § 6331 (k)(2)(A).

Revenue Officer Moore Takes Over the Collection Effort

After the Commissioner sent his mistaken September 7, 2006 letter, communications broke down, so on November 18, 2006, the Commissioner assigned Revenue Officer Laura Moore to collect the delinquent taxes. Addendum 26. RO Moore made initial contact on November 27, 2006 by physically visiting the Beverly MA business address, so she knew Carolyn Britton did not live there, Addendum 26, and hand delivering a Letter 728 and Letter 729, both dated November 27, 2006. 65a, Addendum 43, A325; 67a, Addendum 44, A327.

Enforced Collection Actions

On December 12, 2006, Revenue Officer Laura Moore issued a Letter 1058, Final Notice of Intent to Levy to Carolyn Britton, in her individual capacity but RO Moore used the EIN and business address for Medical Practice Solutions, LLC. 69a, Addendum 45, A329.

On December 13, 2006, RO Moore requested that a series of Federal Tax liens be filed against Carolyn Britton, in her individual capacity, but again RO Moore used the EIN for Medical Practice Solutions, LLC. A334, A341, A345, A350.

Treas. Reg. § 301.6330-1(a)(3) (Q &A-A1) (2010) requires that the Letter 1058 (69a) and the Letter 3172 (72a) be sent to the same person that receives the CP161s, but that clearly did not happen, so this regulation has been violated. The CP161s were sent to Medical Practice Solutions, LLC but the Letter 1058 and Letter 3172 were addressed to Carolyn Britton, in her individual capacity.

On March 12, 2007, Settlement Officer Blais obtained transcripts of the accounts for Medical Practice Solutions, LLC even though the LLC did not request a CDP hearing. 78a, Addendum 58, A156-A157.

On April 23, 2007, a CDP Hearing was held between Settlement Officer Blais and Randy Britton, JD-MBA, CPA. At the hearing Randy Britton, JD-MBA, CPA executed a two pronged strategy to derail the enforced collection action. First, he proved that the Letter 1058 should not have issued in violation of IRC § 6331(k)(2) because the August 9, 2006 installment agreement request was pending, as renewed on January 10, 2007. Addendum 27. Second, he proved that the Letter 3172 was misdirected to an IRS employee named J Augustin. 84a, Addendum 64.

The Letter 3172 Notice of Federal Tax Lien was misdirected like 3% of all Letter 3172s (Treasury In-

spector General Report, A268)). The Notice of Federal Tax Lien was neither sent to nor received by Medical Practice Solutions, LLC or Carolyn Britton. Addendum 27.

Notwithstanding the above, on May 25, 2007, SO Blais found for the Commissioner, saying that the enforced collection action could proceed because (1) the August 9, 2006 installment agreement request did not contain a "specific amount" as required by IRM 5.14.1.3 ¶ 4, and (2) the purpose of the Letter 3172 is to give the taxpayer a CDP hearing, which was provided. 18a, Addendum 27. See IRM 5.14.1.3 (09-26-2008) *Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS.*

The Notice of Determination did not explain why Carolyn Britton would be liable in her individual capacity, nor did it indicate that Carolyn Britton was found liable in her individual capacity. Compare with the Notice of Determinations issued in the *Littriello II* and *McNamee* cases (available on PACER®), where the basis for individual liability was explained and the Notice of Determinations were issued to both Littriello and McNamee in their individual capacities. We have examined both Notices of Determinations, so we can truthfully make these assertions, but we only include the Littriello Notice of Determination in the Appendix at A421-A427. Littriello's individual liability is explained to Littriello at A423. Both the *McNamee* and *Littriello II* opinions specifically state that the Notice of Determinations found them individually liable.

Although the Letter 1058 named Carolyn Britton in her individual capacity, the Letter 3193, Notice of Determination in this case, only named Carolyn Britton in her corporate capacity, which is a fatal due process and jurisdictional defect. Compare the Letter 1058 at 69a, Addendum 45 with the Notice of Determination at 12a, Addendum 24.

Recognizing the jurisdictional trap that would occur if we waited beyond 30 days to resolve this inconsistency, on June 22, 2007, both Medical Practice Solutions, LLC and Carolyn Britton petitioned the Tax Court, in their respective individual capacities, using the EIN of Medical Practice Solutions, LLC, but the petition was only signed once. Addendum 21.

On June 29, 2007, Chief Tax Court Judge John O. Colvin changed the caption, sua sponte, so that Carolyn Britton's capacity was reduced to corporate only, to match the jurisdiction conferred on the Tax Court by the four corners of the Letter 3193, Notice of Determination at addendum 24. App. E, page 22a, Addendum 20. This effectively dismissed Carolyn Britton from the case in her individual capacity.

At the February 20, 2008 Summary Judgment Hearing, Attorney Gregory judicially admitted that there is no assessment against Carolyn Britton, in any capacity. 91a, A74 line 21 to 93a, A76 line 7.

On February 22, 2008, Chief Special Trial Judge Panuthos denied the Commissioner's Motion for Summary Judgment, citing the installment agreement and the misdelivered Letter 3172, as raising genuine issues of material fact. 88a-90a, A68-A69.

Trial was then set for October 20, 2008 in Boston. A97. On October 20, 2008, the case was submitted fully stipulated, pursuant to Tax Court Rule 122. The stipulation is at 95a.

On March 31, 2009, the Tax Court ruled in favor of the Commissioner holding that the misdelivered and backdated Letter 3172, Notice of Federal Tax Lien Filing was in fact sent on December 20, 2006, and that the August 9, 2006 letter requesting an installment agreement was defective because there was no amount offered, even though the amount could be easily calculated from the facts provided, as a matter of law. Judge Cohen found that the December 20, 2006 Letter 3172 was sent, as a stipulated fact, although there is no such stipulation 95a-95a, A119-A122.

Formation of Medical Practice Solutions, LLC

Shortly before November 21, 2004, Carolyn Britton reserved the name "Medical Practice Solutions, LLC" with the Massachusetts Secretary of State with the intent to form a Massachusetts Limited Liability Company because it provides favorable tax treatment to, and limited liability for, its owners. Mass. Gen. Laws. ch. 156C, § 22 (2010) ("no member or manager of a limited liability company shall be personally liable, directly or indirectly, including, without limitation, by way of indemnification, contribution, **assessment** or otherwise, for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company").

On November 21, 2004, Carolyn Britton applied online using the IRS website to obtain an Employer Identification Number (EIN) for Medical Practice Solutions, LLC, which was formed on November 22, 2004. 44a. The EIN for Medical Practice Solutions, LLC, 20-1906376, was provided immediately online, and a confirmation notice, known as a CP575 (46a, Addendum 33, A21), was sent to Medical Practice Solutions, LLC on December 2, 2004 at Carolyn Britton's home address, also known as her last known address within the meaning of Treas. Reg. § 301.6212-2 (2010), and IRM 5.11.1.2.1.1 (12-11-2009). The IRS, sua sponte issued a separate EIN 11-3733909 to Carolyn Britton, personally, pursuant to Notice 99-6 (49a, Addendum 34, A382) and IRS policy as reflected at IRM 5.1.21.6.3 ¶ 1 (09-01-2009).

As the tax account transcripts for Carolyn Britton's business account show (115a-116a, A441-442) and as the IRS has judicially admitted, there is no assessment against Carolyn Britton, so Settlement Officer Blais's finding at App. C, page 20a, Addendum 28 that the "IRS met the statutory and administrative prerequisites to proceed by levy and to record the lien that arose under IRC § 6321" is per se false, without more, as to Carolyn Britton, the purported target of this administrative collection action.

However, a careful reading of his Notice of Determination shows its specious and ambiguous character, which renders it legally insufficient. Settlement Officer Blais never expressly says who the assessment is against. A valid assessment must identify the taxpayer against whom the assessment is made. Treas. Reg. § 301.6203-1 (2010) ("The as-

sessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer . . .") The supporting records, linked through the DLN, points to the Form 941, which identifies the LLC only. 51a and 56a.

Settlement Officer Blais's silence renders his Notice of Determination legally insufficient to give fair notice to either Carolyn Britton or to Medical Practice Solutions, LLC, *Rudd*, especially where the Supreme Court has held that the assessment must be against the relevant taxpayer, so the relevant taxpayer must be identified. *U.S. v. Galletti*, 541 U.S. 114, 120 (2004) ("Section 6203 speaks of "the liability of the taxpayer" (emphasis in original), which indicates that the relevant taxpayer must be determined.") In violation of *Galletti*, SO Blais failed to determine the relevant taxpayer in his Notice of Determination against whom the assessment was made. In the absence of an assessment against Carolyn Britton in her individual capacity this administrative collection action cannot proceed against Carolyn Britton in her individual capacity. *Indianapolis Life Insurance Company v. Herman*, 516 F.3d 5, 8-9 (1st Cir. 2008).

> "[I]t is the assessment, and only the assessment, that sets in motion the [administrative] collection powers of the IRS, powers that include the seizure of assets, the freezing of bank accounts and the creation of liens, all without judicial process."

Philadelphia & Reading Corp. v. U. S., 944 F.2d 1063, 1065 n. 1 (3rd Cir. 1991).

Settlement Officer Blais did not make a finding that there was an assessment against Carolyn Britton, although it is a necessary prerequisite to an administrative collection action against her.

It was reversible error for the Settlement Officer to use the account transcript of the wrong taxpayer against Carolyn Britton, which raises serious constitutional due process issues.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' DECISION IS INCONSISTENT WITH THE DECISIONS OF THIS COURT AND DECISIONS OF OTHER COURTS OF APPEALS

The First Circuit's decision conflicts with the Supreme Court's Decisions in *U.S. v. Galletti*, 541 U.S. 114, 120 (2004) because it will allow an assessment to be used without ensuring that the assessment is against the relevant, liable taxpayer. The First Circuit's decision also conflicts with the Supreme Court's holdings in *Moline Properties* at 438-439, *Stenberg* at 942, *Fox* at 96, *Meese* at 484-485, and *Koshland* at 447, all fully cited in the table of authorities, because it would permit the Commissioner to amend the Tax Code via regulation and use its own definition for the term partnership, when the Tax Code has already expressly stated its own definition for the term partnership, which must be followed even when it varies from the ordinary meaning of the term statutorily defined. Here, the Commissioner changed the statutory definition of the term partnership from a mere "catch-all" to a nar-

rower definition that requires two members. In violation of *Moline Properties* at 438-439, the check the box rules allow taxpayers to voluntarily disregard a legal entity after it has engaged in taxable transactions and retains assets.

The First Circuit's decision also conflicts with the holdings in the Ninth Circuits and the Third Circuit that an assessment is a necessary prerequisite to an administrative collection action.

> "[I]t is the assessment, and only the assessment, that sets in motion the [administrative] collection powers of the IRS, powers that include the seizure of assets, the freezing of bank accounts and the creation of liens, all without judicial process."

Philadelphia & Reading Corp. v. U. S., 944 F.2d 1063, 1065 n. 1 (3rd Cir. 1991).

> The IRS made a timely assessment against the Partnership for unpaid employment taxes. The IRS argues that Debtors, as partners, are not separate "taxpayers" within the meaning of the statutory provisions governing assessment and collection of taxes. It follows, says the IRS, that the timely assessment against the Partnership allows the IRS to collect taxes directly from the individual partners. We are not persuaded.

Galletti v. U.S., 314 F.3d 336, 340 (9th Cir. 2002) rev'd on other grounds *U.S. v. Galletti*, 541 U.S. 114 (2004).

requires an assessment, notice of the assessment, and a ten day voluntary pay period. In *Galletti*, this Court left undecided the important issue of whether an assessment against a business entity can be used against the owners of that business entity in an administrative collection proceeding. It is now time to decide that important question.

Our main argument is that Medical Practice Solutions, LLC and Carolyn Britton are two separate and distinct legal persons under both state[6] and federal law,[7] that cannot be disregarded,[8] so the Commissioner is trying to collect from the wrong person in the wrong capacity,[9] without meeting his statutorily required assessment[10] and notice requirements,[11] which destroys the Tax Court's jurisdiction,[12] Carolyn Britton's due process rights,[13] and the Commissioner's administrative collection powers,[14] all at the same time. Because there is no as-

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[6] Mass. Gen. Laws ch. 156C, § 12(b) (2010).

[7] IRC § 7701(a)(1); *Chickasaw*.

[8] *Moline Properties*.

[9] *Deese, Herring, Weigel, Regensburg, Leyva*.

[10] IRC § 6203; *Bull*.

[11] IRC § 6303, IRC § 6320, IRC § 6330, IRC § 6331; *Jersey Shore; Coson*..

[12] *Anderson, Lunsford*.

[13] *Connolly Accuchem, Powell, Leyva*.

[14] *Jersey Shore, Bull, Coson*.

sessment against Carolyn Britton in any capacity and because there was no notice and demand made upon Carolyn Britton in her individual capacity within 60 days of the tax return filings, this administrative collection action cannot proceed against Carolyn Britton in her individual capacity, so the liens must be released and the Final Notice of Intent to Levy must be rescinded. IRC § 6203, IRC § 6303; *Bull v. U.S.*, 295 U.S. 247, 260 (1935) ("The [IRC § 6203] assessment is given the force of a judgment, and if the amount assessed is not paid when due, administrative officials may seize the debtor's property to satisfy the debt."); *Jersey Shore State Bank v. U.S.*, 479 U.S. 442, 446-448 (1987) (IRC § 6303 notice and demand is required in an administrative collection action, but not in a civil suit).

The Commissioner cannot overrule the Supreme Court's holding in *Moline Properties*, *Stenberg*, and *Fox*, so it violates the supremacy clause for the Commissioner to change the statutory IRC § 7701(a)(2) partnership definition by regulations and to offer the false Hobson's choice between double taxation on the one hand and loss of limited liability on the other, via his voluntary Form 8832 election. *Moline Properties, Inc. v. C.I.R.*, 319 U.S. 436, 438-439 (1943) (a SMLLC cannot be disregarded after it has engaged in taxable business activity, like paying wages, absent fraud). The plain lexicon of the Tax Code, the structure of the Tax Code, Rev. Rul. 88-76, and history,[15] Massachusetts statutory law and Su-

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[15] Susan P. Hamill, *The Origins Behind The Limited Liability Company*, 59 Ohio L. J. 1459, 1496-1501 (1998)

preme Judicial Court precedent,[16] and Supreme Court precedent[17] all converge to make it absolutely clear that a Massachusetts SMLLC is classified as a statutory IRC § 7701(a)(2) partnership, for federal tax purposes, regardless of the number of members, because a statutory IRC § 7701(a)(2) partnership is a catch-all definition into which an unincorporated organization like a SMLLC must fall by the process of elimination because it is not a statutory corporation, not a statutory trust, not a statutory estate, and not a common-law association. Consequently, a Massachusetts SMLLC is free from Subtitle A Income Taxes because it is an IRC § 7701(a)(2) partnership, with pass through taxation to its owner by Tax Code, but it must pay its employment taxes like every other legal entity that pays wages to its employees. The Commissioner has illegally exempted SMLLCs from employment taxation in violation of his duty under IRC § 6301 (2010) to collect same from SMLLCs.

The Commissioner's mistake is that he replaced the broader IRC § 7701(a)(2) statutory definition of a partnership in the Tax Code with his own narrower common-law definition of a partnership that requires two members,[18] in violation of *Stenberg*, the

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[16] Mass. Gen. Laws ch. 156C, § 63 (2010); CFM Buckley/North, *LLC v. Bd. of Assessors of Greenfield*, 453 Mass. 404, 407 (2009).

[17] *Moline Properties*, *Stenberg*.

[18] Treas. Reg. § 301.7701-3(a) (1967) ("The [statutory] term 'partnership' is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships, [like a single member LLC]"); *Bergford*, *Kinter*, *National Commodity*.

cases cited therein, and its progeny.[19] When a term is defined by statute, the statutory definition controls, *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning."), so there is no gap in the Tax Code for the "check the box" regulations to fill and no option to use a different definition of a partnership other than the one in the federal statute being interpreted *Fox v. Standard Oil Company of New Jersey*, 294 U.S. 87, 96 (1935) (Cardozo, J.) (When Congress defines a partnership to include single member LLCs in its own glossary, "[t]here would be little use in such a glossary if we were free in despite of it to choose a meaning for ourselves.")

The "check the box" rules are unconstitutional because they violate not only the supremacy clause but also the origination clause, the lay taxes clause, and the takings clause.

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[19] In violation of *Moline Properties*, *Stenberg*, and *Fox*, the *McNamee* panel used a Connecticut statutory definition of a partnership that requires two members to create and ambiguity that did not exist in the Tax Code itself. *McNamee* at 107. ("Conn. Gen. Stat. Ann. § 34-301(9) ('Partnership' means an association of two or more persons . . ..')") While Connecticut statutory law, the Uniform Partnership Act, and the common-law may all require two members to form a legal partnership, for federal tax purposes under IRC § 7701(a)(2) , these extraneous definitions are irrelevant because we must use Congresses' glossary that explains what a IRC § 7701(a)(2) partnership requires. Because IRC § 7701(a)(2) does not requires two members as a statutory element, two members are not required. Moreover, under 1 U.S. § 1, which states that the plural includes singular, and vice versa, if two members were required, Congress would have to expressly so state to over the presumption in 1 U.S. § 1 that numbers do not matter.

The check the box rules are invalid as applied because they violate IRC § 6301 and Treas. Reg. § 301.6330-1(a)(3) (Q&A-A1). Congress charged the Commissioner under IRC § 6301 with collecting employment taxes, not creating exemptions for employers while shifting the exempted taxes to the employer's owners, in violation of controlling state law. Mass. Gen, Laws ch. 156C, § 22 (2010); Rev. Rul 2004-41.

Even if the employer's owner is properly liable for the SMLLC's employment taxes under the "check the box" rules, there was no proper administrative collection action taken against the business owner in her personal capacity. The statutorily required assessment, Notice and Demand, and Notice of Determination were all sent to or made against the disregarded employer, not the employer's owner, the purported target of collection under the check the box rules. Being made against and sent to a disregarded entity, these notices and assessments were against no one, so they are invalid. As he candidly admits in CCM 200114006 at pages 7-8, the Commissioner cannot have it both ways,. Letter and notices required by IRC § 6203, IRC § 6303, and IRC § 6330 were sent to the wrong taxpayer in the wrong capacity at the wrong address. Because these statutory prerequisites were not met in this case, this administrative lien and levy collection action cannot proceed. In addition, because we were always trying to read the Commissioner's mind, about who he was after, minimal standards of fair notice and due process were not satisfied, which renders this collection action unconstitutional, as a violation of Carolyn Britton's due process rights under *Powell* and *Autrey*.

The Tax Court lacked both personal and subject matter jurisdiction over Carolyn Britton in her individual capacity because the jurisdictional Notice of Determination made no liability determination against Carolyn Britton in her individual capacity, and it was not even directed to Carolyn Britton in her individual capacity at her last known address, as required by law.

The Commissioner, through his agents, has also engaged in a fraud on the Tax Court, by backdating the Letter 3172 and passing it off to the Tax Court as legitimate, causing the Tax Court to adopt that false document, which vitiates the Decision against Carolyn Britton.

Finally, the levy is precluded by the pending August 9, 2006 installment agreement offer that was renewed on January 10, 2007 to include both quarters. IRC § 6331(k)(2).

CONCLUSION

For the above and foregoing reasons, Petitioner respectfully requests the issuance of a writ of certiorari to the United States Court of Appeals for the First Circuit.

Respectfully submitted,

CAROLYN BRITTON, MBA, CMPE
10 Drummer Boy Way
Lexington, MA 02420-1220
(781) 640-5239

APPENDIX

APPENDIX A – JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ENTERED AUGUST 24, 2010

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 09-1994

CAROLYN P. BRITTON, Sole Member,
Petitioner-Appellant,
MEDICAL PRACTICE SOLUTIONS, LLC,
Petitioner,
-vs-
DOUGLAS SHULMAN, Commissioner of the Internal Revenue Service,
Respondent-Appellee.

Before Torruella, Lipez, and Thompson, *Circuit Judges.*

JUDGMENT
Entered: August 24, 2010

After a careful review of the briefs of the parties and the record on appeal, we can see no error or abuse of discretion in the decision of the Tax Court in *Medical Practice Solutions, LLC, Carolyn Britton, Sole Member v. Commissioner of Internal Revenue*, 132 T.C. No. 7, 132 T.C. 125 (2009), in favor of respondent Commissioner.

The judgment of the Tax Court is *affirmed.*

By the Court:

/s/ Margaret Carter, Clerk

APPENDIX B – OPINION AND ORDER OF THE UNITED STATES TAX COURT FILED ON MARCH 31, 2009

132 T.C. No. 7; 132 T.C. 125

UNITED STATES TAX COURT

MEDICAL PRACTICE SOLUTIONS, LLC, CAROLYN BRITTON, SOLE MEMBER, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket No. 14668-07L Filed March 31, 2009

Single member LLC failed to pay employment taxes for several periods. Notices of lien and of intent to levy were sent to B, sole member of LLC. After hearing under sec. 6330, I.R.C., notice of determination sustaining lien and proposed levy were sent to "LLC, B, Sole Member", pursuant to sec. 301.7701-3(b), Proced. & Admin. Regs. (check-the-box regulations). B claims that only LLC is liable and that check-the-box regulations (as applicable to employment taxes related to wages paid before January 1, 2009) are invalid.

Held: Collection may proceed against B. *Littriello v. United States*, 484 F.3d 372 (6th Cir. 2007), and *McNamee v. Dept. of the Treasury*, 488 F.3d 100 (2d Cir. 2007), followed.

Carolyn Britton, for petitioner.

Louise Forbes, for respondent.

JUDGE: Cohen, Mary Ann

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[*125] OPINION

COHEN, Judge: This case was commenced in response to a Notice of Determination Concerning Collection Actions(s) Under Section 6320 and/or 6330 addressed to "Medical Practice Solutions LLC, Carolyn Britton, Sole Member" (petitioner), with respect to unpaid employment taxes for quarters ended March 31 and June 30, 2006. Unless otherwise [*126] indicated, all section references are to the Internal Revenue Code and all Rule references are to the Tax Court Rules of Practice and Procedure.

The issue for decision is whether "check-the-box" regulations, specifically section 301.7701-3(b), Proced. & Admin. Regs., in effect for the periods in issue were invalid in allowing pursuit of collection of employment taxes against the sole member of a limited liability company.

Background

All of the facts have been stipulated, and the stipulated facts are incorporated in our findings by this reference. Carolyn Britton (Britton) resided in Massachusetts at the time the petition was filed. During the periods in issue, Medical Practice Solutions, LLC (the LLC) was a single-member limited liability company registered in the Commonwealth of Massachusetts with its principal office in Massachusetts.

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Britton was the sole member of the LLC during the periods in issue and treated the LLC as her sole proprietorship on Schedule C, Profit or Loss From Business, of her Federal income tax return for 2006. She did not elect to have the LLC treated as a corporation for Federal income tax purposes.

Forms 941, Employer's Quarterly Federal Tax Return, for the periods in issue were filed in the name of the LLC. For the period ended March 31, 2006, the Form 941 reported tax liability in the amount of $ 16,648.01. For the period ended June 30, 2006, the Form 941 reported tax liability of $ 18,434.58. The reported amounts were not paid for either period.

On December 12, 2006, the Internal Revenue Service (IRS) sent to Britton a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing with respect to the unpaid employment taxes for the periods in issue. On December 20, 2006, the IRS sent to Britton a Notice of Federal Tax Lien Filing and Your Right to A Hearing Under IRC 6320. On January 10, 2007, Britton requested a hearing with respect to each collection action. The request for hearing suggested as a collection alternative a purported installment agreement dated August 9, 2006. The request for hearing also requested penalty abatement for "reasonable cause". A letter attached to the request asserted, among other things, that the notice of Federal tax lien was against the wrong taxpayer because [*127] Britton "is not liable for the employment Taxes; Medical Practice Solutions, LLC is liable."

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A hearing pursuant to section 6330 was conducted on April 23, 2007. In the notice of determination sent May 25, 2007, the levy action and the lien were sustained. At the time of the hearing and at the time of the notice, petitioner had not proposed an amount for an installment agreement and had not submitted supporting financial information. Petitioner had merely sent a letter dated August 9, 2006, asking that the letter be considered "a written request to set up a payment plan of the maximum duration and the minimum due now, permitted by law."

Discussion

Before addressing the main issue in this case, we dispose of some arguments raised by petitioner that are unsupported by evidence, reason, or authority.

This case was submitted fully stipulated, and the requirements with respect to adducing proof, or the effect of failure of proof, apply. See Rule 122(b). Several of petitioner's arguments are based on claims as to the manner in which demands and notices were addressed and the pendency of an installment agreement, but there is no evidence in the record supporting those arguments. The stipulated exhibits contradict petitioner's assertions that certain notices, including the notice of determination that is the basis of this case, were addressed "only" to the LLC. So far as the record reflects, all notices were either addressed to the LLC, Carolyn Britton, Sole Member, or to Britton.

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The petition was initially filed in the names of the LLC and Britton, but the caption was corrected on order of the Court to be consistent with the notice of determination. Petitioner now claims that the Court lacks subject matter jurisdiction over Britton because no notice of determination was sent to her. The manner of address in the notice speaks for itself: it was sent to Britton as the sole member of the LLC, consistent with the regulations discussed below. For purposes of this proceeding, under those regulations, the LLC and its sole member are a single taxpayer or person to whom notice is given.

Petitioner asserts that certain IRS instructions for filing employment tax returns are misleading. There is no evidence [*128] supporting that characterization or showing that petitioner was misled.

Although in the request for hearing and the petition, petitioner raised an issue of abatement of penalties, there is no evidence of reasonable cause. Petitioner's opening brief did not address the penalties, and petitioner failed to file the reply brief ordered by the Court. Thus arguments concerning the penalties have been abandoned. See, e.g., *Nicklaus v. Commissioner*, 117 T.C. 117, 120 n.4 (2001).

The "Check-The-Box" Regulations

The relevant parts of the regulations provide:

(b) Corporations. -- For federal tax purposes, the term corporation means --

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(1) A business entity organized under a Federal or State statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic; [Sec. 301.7701-2(b)(1), Proced. & Admin. Regs.]

* * * * * * * *

(2) Wholly owned entities. -- (i) In general. -- A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner. [Sec. 301.7701-2(c)(2), Proced. & Admin. Regs.]

* * * * * * * *

(a) In general. -- A business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election. Thus, elections are necessary only when an eligible entity chooses to be classified initially as other than the default classification or when an eligible entity chooses to change its classification. * * *

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(b) Classification of eligible entities that do not file an election. -- (1) Domestic eligible entities. -- Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is –

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner. [Sec. 301.7701-3(a) and (b)(1), Proced. & Admin. Regs.]

[*129] For employment taxes related to wages paid on or after January 1, 2009, a disregarded entity is treated as a corporation for purposes of employment tax reporting and liability. Sec. 301.7701-2(c)(2)(iv), Proced. & Admin. Regs., T.D. 9356, 2007-2 C.B. 675.

Petitioner's position is that the LLC was the employer liable for the taxes in issue and that so-called check-the-box regulations under which the IRS pursues collection against Britton are invalid. Petitioner contends that the amended regulations, which reverse the effect of regulations applicable to the periods in issue here, show that the prior regulations were unreasonable. Each of petitioner's contentions in this regard, however, has been consistently rejected by other courts.

In *Littriello v. United States*, 484 F.3d 372 (6th Cir. 2007), the Court of Appeals upheld the check-the-box regulations in the context of employment tax

liabilities of a single-member LLC. After reviewing the history of the regulations and their purpose in filling gaps left in the definitions of entities set out in section 7701, the Court of Appeals analyzed the regulations under *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). The Court of Appeals rejected arguments that the Chevron test had been modified by subsequent Supreme Court cases; the argument that the LLC's separate existence under State law had to be recognized; and the argument that the amendments to the regulations that had been proposed as of the time of Littriello's litigation should reflect then-current Treasury Department policy and be applied to that case.

In *McNamee v. Dept. of the Treasury*, 488 F.3d 100 (2d Cir. 2007), the Court of Appeals considered almost identical arguments and reached the same result. The court stated:

> In light of the emergence of limited liability companies and their hybrid nature, and the continuing silence of the Code on the proper tax treatment of such companies in the decade since the present regulations became effective, we cannot conclude that the above Treasury Regulations, providing a flexible response to a novel business form, are arbitrary, capricious, or unreasonable. The current regulations allow the single-owner limited liability company to choose whether to be treated as an "association" -- i.e., a corporation -- or to be disregarded as a separate entity. If such an

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> LLC elects to be treated as a corporation, its owner avoids the liabilities that would fall upon him if the LLC were disregarded; but he is subject to double taxation -- once at the corporate level and once at the individual shareholder level. If the LLC chooses not to be treated as a corporation, either [*130] by affirmative election or by default, its owner will be liable for debts incurred by the LLC, but there will be no double taxation. The IRS check-the-box regulations, allowing the single-owner LLC to make the choice, are therefore eminently reasonable. *Accord Littriello*, 484 F.3d 372, 376-79. [Id. at 109.]

Other courts that have addressed the specific issue before us have followed Littriello and McNamee. See *Kandi v. United States*, 97 AFTR 2d 721, 2006-1 USTC par. 50,231 (W.D. Wash. 2006), affd. 295 Fed. Appx. 873 (9th Cir. 2008); Stearn & Co., LLC v. United States, 499 F. Supp. 2d 899 (E.D. Mich. 2007).

Petitioner asserts that in *Dover Corp. & Subs. v. Commissioner*, 122 T.C. 324, 331 n.7 (2004), this Court "intimated, sua sponte" that the check-the-box regulations were invalid. The Court, however, specifically declined to give an opinion on the validity of the regulations, because neither party had raised the issue, and mentioned only that commentators had speculated on the subject. Moreover, Dover Corp. did not involve employment tax liability of a single-member LLC. Petitioner also cites *People Place Auto Hand Carwash, LLC v. Commissioner*,

126 T.C. 359 (2006), which involved employment tax liability of an LLC with more than one member. None of the cases petitioner cites speaks to the subject here.

Petitioner has not even addressed the authorities directly in point. She has given us no reason to reach a different result, and we have found none. She has not contested the underlying liabilities. We have considered her other contentions, but they are irrelevant or lack merit.

To reflect the foregoing,

Decision will be entered for respondent.

APPENDIX C – IRS NOTICE OF DETERMINATION DATED MAY 25, 2007

Internal Revenue Service
Appeals Office
195 Commerce Way Suite B
Portsmouth NH 03801

Date: **May 25, 2007**

Department of The Treasury
Field East, Area 2
Person to Contact:
Michael Blais
Contact Person ID#:
04-55311
Telephone Numbers:
(603) 433-0593
Fax (603) 433-0597
Refer Reply to:
AP:FE:PSM:MGB
Taxpayer Identification No.:
20-1906376
Tax Type/ Form Number:
Employment/ 941
Tax Period(s) Ended:
03-31-2006, 06-30-2006
In Re:
Due Process Appeal (Tax Court)

Medical Practice Solutions LLC
Carolyn Britton, Sole Member
100 Cummings Center Suite 232C
Beverly MA 01915

CERTIFIED MAIL

Letter 3193-c (01/1999)

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NOTICE OF DETERMINATION CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330

Dear Ms. Britton

We have reviewed the taken or proposed collection action for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a redetermination within 30 days from the date of this letter.

To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at ww.ustaxcourt.gov.

The Tax Court has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed $50,000. You also can get information about this procedure by writing to the Tax Court, or accessing the Tax Court website at www.ustaxcourt.gov.

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file

late. If the court determines that you filed your petition with the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s).

If you have any questions, please call the person whose name and telephone number are shown above.

Summary of Determination:

The collection action proposed in the 12-12-2006 final notice of intent to levy will proceed. The Notices of Federal Tax Lien filed on or about 12-19-2006 and 12-27-2006 will remain on file in full force and effect until satisfied or unenforceable by law.

Sincerely,

/s/ Matthew N. McLaughlin

Matthew N. McLaughlin
Appeals Team Manager

Cc:
Randall A. Britton
10 Drummer Boy Way
Lexington MA 02420

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Attachment to Letter 3193:
Medical Practice Solutions LLC:
Carolyn Britton, Sole Member 20-1906376

Request submitted timely under IRC § 6320 & 6330

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Date of CDP Request
Employment	03/2006, 06/2006	12/12/2006	1/10/2007
Employment	03/2006, 06/2006	12/19/2006	1/10/2007

Summary and Recommendation

The taxpayer submitted a timely "Request for a Collection Due Process Hearing" in response to the issuance of a final notice of intent to levy and the filing of Notices of Federal Tax Lien for unpaid employment taxes for the periods ended 03-31-2006 and 06-30-2006.

Based on consideration of all issues raised during the hearing process and a review of the information available from the administrative record it is determined that the proposed collection action should proceed and the lien notices should remain on file for the reasons more fully described below.

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Brief Background

The named business operates as a medical billing facility. The business failed to make sufficient federal tax deposits for the periods noted. Balance due returns were filed for each period. Assessments were made and notice and demand issued respectively on 7-3-2006 and 9-4-2006. IRS issued "urgent" balance due notices on 8-7-2006 and 10-23-2006. On 11-18-2006 the balance due accounts were assigned to a Revenue Officer. The Revenue Officer issued an additional balance due notice on 11-27-2006 and spoke to the representative on 11-28-2006. On 11-28 the representative advised that the business/sole member would attempt to borrow 'funds to pay. On 12-12-2006 the Revenue Officer issued the final notice and requested that liens be filed. The business has also accrued additional employment tax debt for the 09-2006 and 12-2006 period. Sufficient deposits appear to be on record for the 03-31-2007 period.

Matters Considered at the Appeals Hearing

I. Applicable Law and Administrative Procedures.

- IRC Section 6201, 6303, 6322, 6331

The assessment, notice and demand and balance due as of the final notice and lien notice date were verified using computer account transcripts. No irregularities are noted.

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- Prior Attempts to Contact

The urgent notices dated 7 -3-2006 and 9-4-2006 advised the taxpayer that additional collection action would proceed if the balances remained unpaid.

- Issues Specific to this case

The representative maintained that the Revenue Officer advised him that he had until 12-15-2006 to provide evidence of a loan application. He states that the 12-12-2006 collection action was premature. The record reflects that on 11-28-2006 the Revenue Officer advised that the final notice and lien notices would be issued/filed. The statements do not appear to make the actions contingent on performance by 12-15. The representative disputes these statements. Nonetheless, the "urgent" notice issued previous to December states that collection action may proceed and that the lien notice could be filed at any time. Since the balances due remained unpaid the Revenue Officers actions were not precluded.

The taxpayer also states that he had requested an installment agreement on 8-9-2006 but was told he was precluded due to un-filed returns. The automated collection system (ACS) in their review had concluded that three employment tax returns had not been filed. . The representative demonstrated at the hearing that at the time of the request that the business was in filing compliance and was not otherwise precluded from requesting a payment agreement. Mr. Britton maintains that since he had a pending installment agreement with IRS that further collection action was precluded. The letter of 8-9-2006 provided is not sufficient to constitute a

"pending" installment agreement under IRS definitions. IRM 5.14.1.3(4) states that among other things the proposed agreement must propose a specific payment amount. The 8-9-2006 letter does not propose a specific amount and to the best of the IRS knowledge at the time there were un-filed returns that were overdue.

The representative claims that the 3172 letter advising of the lien filing was not received. He provided proof that the letter appears to have been misdirected. The remedy for this would be to mail a substitute notice and grant the taxpayer the opportunity for a hearing under IRC § 6320. Since the taxpayer did request and has been granted a hearing under IRC § 6320 the issuance of a substitute notice is unnecessary.

- Prior involvement

The appeals employee conducting the hearing has had no prior involvement with respect to the taxes at issue

II. Relevant Issues Presented by the Taxpayer.

- Challenges to the Existence or Amount of the Liability.

The taxpayer did not challenge the amount or existence of the tax liability. Penalty removal for reasonable cause was raised as an issue in the hearing request. The taxpayer did not demonstrate that reasonable cause for removal of the statutory penalties exists. The request is denied accordingly.

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- Challenges to the Appropriateness of the Proposed Collection Action

The representative states that the business and the sole member are not able to satisfy the tax debt in full. He also notes that the lien filing has caused the business to lose a line of credit. Evidence to support a lien withdrawal was not submitted and is not evident. It does not appear probable that a lien withdrawal would result in payment to IRS of its lien interest.

- Collection Alternatives Offered by the Taxpayer.

The original request proposed an installment agreement. The representative did not propose an installment agreement at the 4-23-2007 "face to face" hearing but did inquire about an Offer in Compromise. An offer was discussed and a deadline of 5-7-2007 was established for submission of that or another suitable collection alternative. The representative has not responded further and has not provided any financial data. It was noted that the representative also declined to provide financial data to the Revenue Officer.

- Other Issues Raised by the Taxpayer.

No other relevant issues were raised.

III. Balancing Efficient Collection and Intrusiveness.

The decision to proceed with the proposed collection action and to maintain the recorded lien notices

balances the need for the efficient collection of the taxes with the taxpayers' legitimate concerns of intrusiveness because:

- The balances due listed in the 12/12/2006 and 12/19/2006 notices remain unpaid.
- IRS met the statutory and administrative prerequisites to proceed by levy and to record the lien that arose under IRC § 6321.
- No cause to withdraw the lien under IRC § 6323(j) was shown to exist.
- No financial data was provided.
- No specific collection alternative was submitted.

APPENDIX D – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DENYING PETITION FOR REHEARING AND REHEARING ENBANC ON NOVEMBER 15, 2010

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 09-1994

CAROLYN P. BRITTON, Sole Member,
Petitioner-Appellant,
MEDICAL PRACTICE SOLUTIONS, LLC,
Petitioner,
-vs-
DOUGLAS SHULMAN, Commissioner of the Internal Revenue Service,
Respondent-Appellee.

Before Lynch, *Chief Judge*, Torruella, Boudin, Lipez, Howard, and Thompson, *Circuit Judges*.

ORDER OF COURT
Entered: November 15, 2010

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

APPENDIX E –ORDER OF THE UNITED STATES TAX COURT SERVED ON JUNE 27, 2007

UNITED STATES TAX COURT
Washington, DC 20217

Medical Practice Solutions, LLC, Carolyn Britton	)	
Petitioner,	)	Docket No. 14668-07L
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER

For cause, it is

ORDERED that the caption of this case is amended to read, "Medical Practice Solutions, LLC, Carolyn Britton, Sole Member, Petitioner(s) v. Commissioner of Internal Revenue, Respondent."

/s/ John O. Colvin
Chief Judge

Dated: Washington, D.C.
June 29, 2007

APPENDIX F –DECISION OF THE UNITED STATES TAX COURT ENTERED ON APRIL 8, 2009

UNITED STATES TAX COURT
Washington, DC 20217

MEDICAL PRACTICE SOLUTIONS, LLC, CAROLYN BRITTON, SOLE MEMBER	)	
Petitioner,	)	Docket No. 14668-07L
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

DECISION

Pursuant to the determination of the Court set forth in its Opinion (132 T.C. No. 7) filed March 31, 2009, it is hereby

ORDERED and DECIDED that respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 for 2006, upon which this case is based.

/s/ Mary Ann Cohen
Judge

ENTERED: April 8, 2009
SERVED April 8, 2009

APPENDIX G – CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

1 U.S.C. § 1 (2010)

§ 1. Words Denoting Number, Gender, and So Forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise-

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

IRC § 3101 (2010)

§ 3101. Rate of Tax

(a) **Old-Age, Survivors, And Disability Insurance**

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121 (a)) received by him with respect to employment (as defined in section 3121 (b))-

In cases of wages received during:	**The rate shall be:**
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

(b) **Hospital Insurance**

(1) **In general**

In addition to the tax imposed by the pre-

ceding subsection, there is hereby imposed on the income of every individual a tax equal to 1.45 percent of the wages (as defined in section 3121 (a)) received by him with respect to employment (as defined in section 3121(b)).

IRC § 3102 (2010)
§ 3102. Deduction of Tax from Wages

(a) **Requirement**
The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid.

(b) **Indemnification of Employer**
Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

IRC § 3111 (2010)
§ 3111. Rate of Tax

(a) Old-age, survivors, and disability insurance
In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121 (a)) paid by him with re-

spect to employment (as defined in section 3121 (b))-

In cases of wages paid during:	The rate shall be:
1990 or thereafter	6.2 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121 (a)) paid by him with respect to employment (as defined in section 3121 (b))-

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

IRC § 3401(d)(1) (2010)

(d) Employer

For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that-

(1) if the person for whom the individual performs or performed the services does

not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

IRC § 3402(a)(1) (2010)

(a) **Requirement of withholding**

(1) **In general**

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary.

IRC § 3403 (2010)

§ 3403. Liability for Tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

IRC § 6203 (2010)

§ 6203. Method of Assessment

The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the

Secretary shall furnish the taxpayer a copy of the record of the assessment.

IRC § 6301 (2010)
§ 6301. Collection Authority
The Secretary shall collect the taxes imposed by the internal revenue laws.

IRC § 6303 (2010)
§ 6303. Notice and Demand for Tax

(a) **General rule**
Where it is not otherwise provided by this title, the Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) **Assessment prior to last date for payment**
Except where the Secretary believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

IRC § 6320 (2010)
§ 6320. Notice and Opportunity for Hearing upon Filing of Notice of Lien

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(a) **Requirement of notice**

(1) **In general**
The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

(2) **Time and method for notice**
The notice required under paragraph (1) shall be-

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail to such person's last known address,

not more than 5 business days after the day of the filing of the notice of lien.

(3) **Information included with notice**
The notice required under paragraph (1) shall include in simple and nontechnical terms-

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph

(2);

(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and

(D) the provisions of this title and procedures relating to the release of liens on property.

IRC § 6321 (2010)
§ 6321. Lien for Taxes
If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

IRC § 6330 (2010)
§ 6330. Notice and Opportunity for Hearing before Levy

(a) **Requirement of notice before levy**

(1) **In general**
No levy may be made on any property or right to property of any person unless the Secretary has notified such person in

writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) **Time and method for notice**
The notice required under paragraph (1) shall be-

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(c) **Matters considered at hearing**
In the case of any hearing conducted under this section-

(1) **Requirement of investigation**
The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

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(2) **Issues at hearing**

(A) **In general**

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including-

(i) appropriate spousal defenses;

(ii) challenges to the appropriateness of collection actions; and

(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) **Underlying liability**

The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

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IRC § 6331 (2010)
§ 6331. Levy and Distraint

(a) **Authority of Secretary**
If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

(d) **Requirement of notice before levy**

(1) **In general**
Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) **30-day requirement**
The notice required under paragraph (1) shall be-

(A) given in person,

(B) left at the dwelling or usual place of business of such person, or

(C) sent by certified or registered mail

to such persons's last known address,

no less than 30 days before the day of the levy.

(4) **Information included with notice**
The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms-

(A) the provisions of this title relating to levy and sale of property,

(B) the procedures applicable to the levy and sale of property under this title,

(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

(E) the provisions of this title relating to redemption of property and release of liens on property, and

(F) the procedures applicable to the redemption of property and the release of a lien on property under this title.

IRC § 6672 (2010)
§ 6672. Failure to Collect and Pay over Tax, or Attempt to Evade or Defeat Tax

(a) **General rule**
Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

IRC § 6901(a) (2010)
§ 6901. Transferred Assets

(a) **Method of collection**
The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same man-

ner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

IRC § 7501 (2010)
§ 7501. Liability for Taxes Withheld or Collected

(a) **General rule**
Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

IRC § 7701(a)(1) (2010)
§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(1) **Person**
The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

IRC § 7701(a)(2) (2010)

Appendix G

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(2) **Partnership and partner**
The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

IRC § 7701(a)(3) (2010)
§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(3) **Corporation**
The term "corporation" includes associations, joint-stock companies, and insurance companies

IRC § 7701(a)(14) (2010)
§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-

(14) **Taxpayer**
The term "taxpayer" means any person subject to any internal revenue tax.

Mass. Gen. Laws ch. 156C, § 2(5) (2010)
§ 156C:2. Definitions
As used in this chapter, the following words shall unless the context clearly otherwise requires have the following meanings:
(5) "Limited liability company" and "domestic limited liability company", an unincorporated organization formed under this chapter and having 1 or more members.

Mass. Gen. Laws ch. 156C, § 12(b) (2010)
§ 156C:12. Certificate of organization
(b) A limited liability company is formed at the time of the filing of the initial certificate of organization in the office of the state secretary or at any later date specified in the certificate of organization if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of organization.

Mass. Gen. Laws. ch. 156C, § 22 (2010)
§ 156C:22. Debts, obligations and liabilities of limited liability company
Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability

company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be personally liable, directly or indirectly, including, without limitation, by way of indemnification, contribution, assessment or otherwise, for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

Mass Gen Laws. Ch. 156C, § 63 (2010)
§ 156C:63. Duties and liabilities of members and managers

(a) Unless the provisions of this chapter or the context indicate otherwise, each reference in the General Laws to a "person", where such reference includes any partnership, whether general or limited and whether domestic or foreign, shall be deemed to include a limited liability company.

Treas. Reg. § 301.6203-1 (2010)
§ 301.6203-1. Method of assessment

The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the

case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

Treas. Reg. § 301.6212-2(a) (2010)
§ 301.6212-2. Definition of last known address
(a) *General rule.* Except as provided in paragraph (b)(2) of this section, a taxpayer's last known address is the address that appears on the taxpayer's most recently filed and properly processed Federal tax return, unless the Internal Revenue Service (IRS) is given clear and concise notification of a different address. Further information on what constitutes clear and concise notification of a different address and a properly processed Federal tax return can be found in Rev. Proc. 90-18 (1990-1 C.B. 491) or in procedures subsequently prescribed by the Commissioner.

Treas. Reg. § 301.6330-1(a)(3) (Q &A-A1) (2010)
§ 301.6330-1. Notice and opportunity for hearing prior to levy
(a) *Notification* -(1) *In general.*

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)-i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Treas. Reg. § 301.6331-4(a)(2) (2010)

§ 301.6331-4. Restrictions on levy while installment agreements are pending or in effect

(a) *Prohibition on levy* -(1) *In general.* No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or

termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) *When a proposed installment agreement becomes pending.* A proposed installment agreement becomes pending when it is accepted for processing. The IRS may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

U.S. Const. amend. V

Amendment V. Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same of-

fence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. art I, § 7, cl. 1
Article I. LEGISLATIVE DEPARTMENT
§ 7. Bills and Resolutions
All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

APPENDIX H – SELECTED ADDENDUM PAGES 32-68, ATTACHED TO PETITIONER'S BRIEF FILED IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

CERTIFICATE OF ORGANIZATION

Pursuant to the provisions of the Massachusetts Limited Liability Company Act (the "Act"), the undersigned hereby certify as follows:

1. Federal Employer Identification Number: 20-1906376

2. Name of the Limited Liability Company. The name of the limited liability company to be formed hereby is Medical Practice Solutions, LLC (the "LLC").

3. Office of the Limited Liability Company. The address of the office of the LLC in the Commonwealth at which the LLC will maintain its records in accordance with the Act is 100 Cummings Center Suite 232C, Beverly, Massachusetts 01915.

4. Business of the LLC. The general character of the business of the LLC is to engage in the provision of Management Services to Medical Practices; and to engage in any other activity in which a limited liability company organized under the laws of the Commonwealth of Massachusetts may lawfully engage.

5. Date of Dissolution. The LLC shall have no fixed date upon which it shall dissolve.

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6. Agent for Service of Process. The name and address of the resident agent for service of process for the LLC is Carolyn Britton, 100 Cummings Center Suite 232C, Beverly, Massachusetts 01915.

7. Managers: Carolyn Britton is the manager.

[Paragraphs 8-9, and the SOS stamp are omitted.]

IN WITNESS WHEREOF, the undersigned hereby affirms under the penalties of perjury that the facts stated herein are true, as of November 22, 2004.

/s/ Carolyn Britton

Carolyn Britton

Appendix H

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
HOLTSVILLE NY 11742-9003

Date of this notice: 12-02-2004
Employer Identification Number:
20-1906376

Form: SS-4

Number of this notice: CP 575 A

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH
THE STUB OF THIS NOTICE.

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
10 DRUMMER BOY WAY
LEXINGTON MA 02420

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 20-1906376. This EIN will identify your business account, tax returns, and documents even if you have no employees. Please keep this notice in your permanent records.

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When filing tax documents, please use the label IRS provided. If that isn't possible, you should use your EIN and complete name and address shown above on all federal tax forms, payments and related correspondence. If this information isn't correct, please correct it using the tear off stub from this notice. Return it to us so we can correct your account. If you use any variation of your name or EIN, it may cause a delay in processing and may result in incorrect information in your account. It also could cause you to be assigned more than one EIN.

Based on the information from you or your representative, you must file the following form(s) by the date shown next to it.

Form 941	04/30/2005
Form 940	01/31/2006

If you have questions about the form(s) or the due date(s) shown, you can call us at 1-800-829-4933 or write to us at the address at the top of the first page of this letter. If you need help in determining what your tax year is, you can get Publication 538, Accounting Periods and Methods, at your local IRS office.

We assigned you a tax classification based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a determination of your tax classification, you may sock a private letter ruling from the IRS under the procedures sat forth in Revenue Procedure 98-01, 1998-1

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I.R.B.7 (or the superceding revenue procedure for the year at issue).

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
HOLTSVILLE NY 11742-9003

Date of this notice: 12-02-2004
Employer Identification Number:
11-3733909

Form: SS-4

Number of this notice: CP 575 E

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB OF THIS NOTICE.

CAROLYN P BRITTON
MEDICAL PRACTICE SOLUTIONS LLC
10 DRUMMER BOY WAY
LEXINGTON MA 02420

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 11-3733909. This EIN will identify your business account, tax returns, and documents even if you have no employees. Please keep this notice in your permanent records.

Appendix H

When filing tax documents, please use the label IRS provided. If that isn't possible, you should use your EIN and complete name and address shown above on all federal tax forms, payments and related correspondence. If this information isn't correct, please correct it using the tear off stub from this notice. Return it to us so we can correct your account. If you use any variation of your name or EIN, it may cause a delay in processing and may result in incorrect information in your account. It also could cause you to be assigned more than one EIN.

If you want to apply to receive a ruling or a determination letter recognizing your organization as tax exempt, and have not already done so, you should file Form 1023/1024, Application for Recognition of Exemption, with the IRS Ohio Key District Office. Publication 557, Tax Exempt Status for Your Organization, is available at most IRS offices and has details on how you can apply.

IMPORTANT REMINDERS:
* Keep a copy of this notice in your permanent records.

* Use this EIN and your name exactly as they appear above on all your federal tax forms.

* *Refer* to *this EIN* on your tax related correspondence and documents.

Thank you for your cooperation.

Appendix H

[DLN] 17141 161 807 79 6

Form 941 for 2006:
Employer's QUARTERLY Federal Tax Return

Report for this Quarter ...
(Check one.)

✓ 1: January, February, March
2: April, May, June
3: July, August, September
4: October, November, December

[Unnecessary details have been omitted]

(EIN) Employer Identification Number 20-1906376

Name *(not your trade name)*	Medical Practice Solutions, LLC
Trade name *(if any)*	[Left Blank]
Address	100 Cummings Center Suite 232C
	Beverly MA 01915

Part 1: Answer these questions for this quarter.

1 Number of employees	5
2 Wages, tips, and other compensation	59282.19
3 Total income tax withheld from wages, tips, and other compensation	7479.62
5d Total social security and Medicare taxes	9168.40
6 Total taxes before adjustments (lines 3 + 5d=line 6)	16648.02

Appendix II

7a Current quarter's fractions of cent	-.01
7h TOTAL ADJUSTMENTS (Combine all amounts: lines 7a-7g.)	-.01
8 Total taxes after adjustments (Combine lines 6 and 7h.)	16648.01
9 Advance EIC payments to employees	
10 Total taxes after adjustment for Advance EIC (line 8-line 9=line 10)	16648.01
11 Total deposits for this quarter, including prior quarter overpayments	
12 Balance due (If line 10 is more than line 11, write the difference here)	16648.01

Part 5: Sign here: You MUST fill out both sides of this form and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the bets of my knowledge and belief, it is true, correct, and complete.

Sign your name here	/s/ Carolyn Britton
Print name and title	Carolyn P. Britton, CEO
Date	04/30/206 (sic)

INTERNAL REVENUE SERVICE
RECEIVED

MAY 01 2006

TAXPAYER ASSISTANCE CENTER
STONEHAM, MA 02180

Appendix H

[Unnecessary details have been omitted]

[DLN] 17141-161-80779-6

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINATTI, OH 45999-0039

For assistance, call: 1-800-829-0115

Notice Number: CP161
Date: July 3, 2006

Taxpayer Identification Number:
20-1906376
Tax Form: 941
Tax Period: March 31, 2006

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915-6126234

Request for Payment Federal Employment Tax

Our records show you owe $18,769.49 on your return for the above tax period. A portion of the penalty shown below is because your tax deposits were not made in sufficient amounts by the dates required.

To avoid additional penalty and/or interest, please allow enough mailing time so that we receive your payment by **July 24, 2006;** however, if any of the balance due amount includes unpaid tax, and the

unpaid tax you owe is not paid within 10 days of the notice date, an additional 5% federal tax deposit penalty will be charged on the amount of the unpaid tax. Make your check or money order payable to the United States Treasury. Write your taxpayer identification number on your payment and mail it with the stub portion of this notice.

If you think we made a mistake, please call us at the number listed above. When you call, please have your payment information and a copy of your tax return available. This information will help us find any payment you made that we haven't applied.

Tax Statement

Tax on Return	$16,648.01
Total Credits	$.00
Amount Previously Refunded to You	$.00
Underpayment	$16,648.01
Penalty	$1,914.52
Interest	$206.96
Amount You Owe	$18,769.49

For tax forms, instructions and information visit www.irs.gov . (Access to this site will not provide you with your specific taxpayer account information.)

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Interest

The following table shows the interest charges on your account. To compute your interest we used principal times factor.

From Date	To Date	Days	Rate	Factor	Principal	Interest
04-30-2006	06-30-2006	61	7.0%	0.0117-66192	16648.01	195.88
06-30-2006	07-03-2006	3	8.0%	0.0006-57678	16843.89	11.08
				Total	Interest:	206.96

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[DLN] 341411545555806

Form 941 for 2006:
Employer's QUARTERLY Federal Tax Return

Report for this Quarter ...
(Check one.)

1: January, February, March
✓ 2: April, May, June
3: July, August, September
4: October, November, December

[Unnecessary details have been omitted]

(EIN) Employer Identification Number 20-1906376

Name *(not your trade name)*	Medical Practice Solutions, LLC
Trade name *(if any)*	[Left Blank]
Address	100 Cummings Center Suite 232C
	Beverly MA 01915

Part 1: Answer these questions for this quarter.

1 Number of employees	6
2 Wages, tips, and other compensation	63460.03
3 Total income tax withheld from wages, tips, and other compensation	8524.16
5d Total social security and Medicare taxes	9910.43
6 Total taxes before adjustments (lines 3 + 5d=line 6)	18434.59

Appendix H

7a Current quarter's fractions of cent	-.01
7h TOTAL ADJUSTMENTS (Combine all amounts: lines 7a-7g.)	-.01
8 Total taxes after adjustments (Combine lines 6 and 7h.)	18434.58
9 Advance EIC payments to employees	
10 Total taxes after adjustment for Advance EIC (line 8-line 9=line 10)	18434.58
11 Total deposits for this quarter, including prior quarter overpayments	3098.48
12 Balance due (If line 10 is more than line 11, write the difference here)	15336.10

Part 5: Sign here: You MUST fill out both sides of this form and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the bets of my knowledge and belief, it is true, correct, and complete.

Sign your name here	/s/ Carolyn Britton
Print name and title	Carolyn P. Britton, CEO and President
Date	7/31/06

INTERNAL REVENUE SERVICE
RECEIVED

JULY 31 2006
TAXPAYER ASSISTANCE CENTER
BOSTON, MA 02203

Appendix H

[Unnecessary details have been omitted]

IRS DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
HOLTSVILLE, NY 11742-9019

Notice Number: CP 504
Notice Date: 08-07-2006

SSN/EIN: 20-1906376
Caller ID:

7105 5678 7188 3410 5503

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915-6126234

201906376221

Urgent !!
We intend to levy on certain assets. Please respond NOW.
(To avoid additional penalty and interest, pay the amount you owe within ten days from the date of this notice.)

Our records indicate that you haven't paid the amount you owe. The law requires that you pay your tax at the time you file your return. This is your notice, as required by Internal Revenue Code Section 6331(d), of our intent to levy (take) any state tax refunds that you may be entitled to if we don't receive your payment in full. In addition, we will begin to

search for other assets we may levy. We can also file a Notice of Federal Tax Lien, if we haven't already done so. To prevent collection action, please pay the current balance now. If you've already paid, can't pay, or have arranged for an installment agreement, it is important that you call us immediately at the telephone number shown below. Current balance may include Civil Penalty, if assessed.

Account Summary

Form: 941 Tax Period: 03-31-2006

Current Balance:	$19,829.65
Includes:	
Penalty:	$83.24
Interest:	$144.52
Last Payment:	$0.00

For information on your penalty & interest computations, you may call 1-800-829-0115

Questions? Call us at 1-800-829-0115 1219B, *Notice of Potential Third Party Contact* for additional information.

See the enclosed Publication 594, *The IRS Collection Process* and Notice 1219B, Notice of Potential Third Party Contact for additional information.

Appendix II

[Unnecessary details have been omitted]

[DLN] 34141-154-55580-6

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI, OH 45999-0039

For assistance, call: 1-800-829-0115

Notice Number: CP161
Date: September 4, 2006

Taxpayer Identification Number:
20-1906376
Tax Form: 941
Tax Period: June 30, 2006

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915-6126234

Request for Payment Federal Employment Tax

Our records show you owe $17,141.16 on your return for the above tax period. A portion of-the penalty shown below is because your tax deposits were not made in sufficient amounts by the dates required.

To avoid additional penalty and/or interest, please allow enough mailing time so that we receive your payment by **September 25, 2006**; however, if any of the balance due amount includes unpaid tax, and

the unpaid tax you owe is not paid within 10 days of the notice date, an additional 5% federal tax deposit penalty will be charged on the amount of the unpaid tax. Make your check or money order payable to the United States Treasury. Write your taxpayer identification number on your payment and mail it with the stub portion of this notice.

If you think we made a mistake, please call us at the number listed above. When you call, please have your payment information and a copy of your tax return available. This information will help us find any payment you made that we haven't applied.

Tax Statement

Tax on Return	$18,434.58
Total Credits	$3,098.48-
Amount Previously Refunded to You	$.00
Underpayment	$15,336.10
Penalty	$1,686.97
Interest	$118.09
Amount You Owe	**$17,141.16**

The following is a list of payments we have credited to your account for the above tax return and tax period:

Date	Amount
06/14/2006	$3,098.48

Appendix H

Interest

The following table shows the interest charges on your account. To compute your interest we used principal times factor.

From Date	To Date	Days	Rate	Factor	Principal	Interest
07-31-2006	09-04-2006	35	8.0%	0.0076-99885	15336.10	118.09
				Total	Interest:	118.09

Appendix H

[Unnecessary details have been omitted]

IRS DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
HOLTSVILLE, NY 11742-9019

Notice Number: CP 504
Notice Date: 10-23-2006
SSN/EIN: 20-1906376
Caller ID:

7105 5678 7188 3625 0621

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY MA 01915-6126234

201906376221

Urgent !!
We intend to levy on certain assets. Please respond NOW.
(To avoid additional penalty and interest, pay the amount you owe within ten days from the date of this notice.)

Our records indicate that you haven't paid the amount you owe. The law requires that you pay your tax at the time you file your return. This is your notice, as required by Internal Revenue Code Section 6331(d), of our intent to levy (take) any state tax refunds that you may be entitled to if we don't receive your payment in full. In addition, we will begin to

search for other assets we may levy. We can also file a Notice of Federal Tax Lien, if we haven't already done so. To prevent collection action, please pay the current balance now. If you've already paid, can't pay, or have arranged for an installment agreement, it is important that you call us immediately at the telephone number shown below. Current balance may include Civil Penalty, if assessed.

Account Summary

Form: 941 Tax Period: 06-30-2006	
Current Balance:	$18,172.06
Includes:	
Penalty:	$76.68
Interest:	$187.42
Last Payment:	$0.00

For information on your penalty & interest computations, you may call 1-800-829-0115

Appendix H

[Unnecessary details have been omitted]

INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
1 MONTVALE AVE.
STONEHAM, MA 02180

Letter Date: 11/27/06
(Social Security or
Employer Identification Number)
20-1906376
Person to Contact:
LAURA MOORE
Employee Identification Number:
04-00504
Contact Telephone Number:
(781) 835-4250

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915-6126234

Our records show that you still owe the federal tax shown below, plus penalty and interest as provided by law, computed to 10 days from the date of this letter.

You may pay in person or by mail. Please make your check or money order payable to the U.S. Treasury. Write your social security number or employer identification number on your payment. To pay by mail, send your payment in the enclosed envelope with a copy of this letter. If you have recently paid this tax,

cannot pay it, or have questions about your account, please contact the person whose name and telephone number are shown above.

The unpaid amount from prior notices shown on the following page(s) may include tax, penalties and interest you still owe us. It also includes any credits and payments we've received since we sent our last notice to you.

[Paragraphs on interest and penalties have been omitted]

If you have any questions about your account or would like a further detailed explanation of the penalty and interest charges on your account, please call me at the telephone number shown at the beginning of the letter.

Sincerely yours,

/s/ Laura Moore

LAURA MOORE
REVENUE OFFICER

Letter 728 (Rev. 06-2004)

Appendix II

INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
1 MONTVALE AVE.
STONEHAM, MA 02180

Letter Date: 11/27/06
(Social Security or
Employer Identification Number)
20-1906376
Person to Contact:
LAURA MOORE
Employee Identification Number:
04-00504
Contact Telephone Number:
(781) 835-4250

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915-6126234

Dear MEDICAL PRACTICE SOLUTIONS LLC:

We have no record of receiving the tax return(s) listed on the following page(s) of this letter. If you have filed, or if you are not required to file, please give us the information requested in the space beneath the listed return(s).

If you are required to file, please attach the returns to this letter and send them to us within the next few days. Include your payment for any tax due plus interest as provided by law. File and pay in 10 days from date of this letter.

Appendix H

The law also provides for penalty charges for filing returns late, paying taxes late, and making deposits late, unless there is reasonable cause for delay. If you believe you have reasonable cause for not filing and paying on time, please explain in a separate statement attached to each return. It will help us determine whether you can be excused from paying penalties.

If your address as shown above is incorrect, please change it so we can update our records. We have enclosed a self-addressed envelope for your convenience and a copy of this letter for your records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

/s/ Laura Moore

LAURA MOORE
REVENUE OFFICER

Enclosures:
Envelope
Copy of this letter

Letter 729(DO)(CG)(Rev. 10/2006)
Catalog Number: 40327E

Appendix II

INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
1 MONTVALE AVE.
STONEHAM, MA 02180

CERTIFIED MAIL – RETURN RECEIPT

Letter Date: 12/12/06
(Social Security or
Employer Identification Number)
20-1906376
Person to Contact:
LAURA MOORE
Contact Telephone Number:
(781) 835-4250
Employee Identification Number:
04-00504

CAROLYN BRITTON
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915

FINAL NOTICE
NOTICE OF INTENT TO LEVY AND NOTICE OF
YOUR RIGHT TO A HEARING
PLEASE RESPOND IMMEDIATELY

Your Federal tax is still not paid. We previously asked you to pay this, but we still haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code (IRC) Section 6331 and your right to receive Appeals consideration under IRC Section 6330.

Appendix H

We may file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, or request Appeals consideration within 30 days from the date of this letter, we may take your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, wages, commissions, and other income. For more information, we've enclosed Publication 594, *What You Should Know About the IRS Collection Process,* Publication 1660, *Collection Appeal Rights,* and Form 12153, *Request for a Collection Due Process Hearing.* To preserve your right to contest Appeals' decision in the U.S. Tax Court or U.S. District Court, you must send us the completed Form 12153 within 30 days from the date of this letter.

To prevent collection action, please send your full payment today. Make your check or money order payable to U.S. Treasury. Write your social security number or employer identification number on your payment. Send your payment to us in the enclosed envelope with a copy of this letter.

The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes any credits and payments we've received since we sent our last notice to you. Below is a brief explanation of the interest and/or failure to pay

penalty that may be included in the amount you owe:

Interest - Internal Revenue Code Section 6601
We charge interest when your tax is not paid on time. Interest is computed from the due date of your return (regardless of extensions) until paid in full or to the date of this notice. Interest is also charged on penalties assessed on your account. Interest compounds daily except on underpaid estimated taxes for individuals or corporations.

Letter 1058 (DO) (Rev. 6-2005)
Catalog Number: 40488S

Appendix H

[Letter 3172]

CERTIFIED MAIL: 7105 5678 7184 6181 6032
Letter Date : 12/20/2006

MAILED TO:
CAROLYN BRITTON
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915

Taxpayer Identification Number:
20-1906376

Contact Person:
LAURA MOORE

Employee Identification Number:
04-00504

Contact Telephone Number:
(781) 835-4250

CAROLYN BRITTON
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915

NOTICE OF FEDERAL TAX LIEN FILING AND YOUR RIGHT TO A HEARING UNDER IRC 6320

We filed a Notice of Federal Tax Lien on 12/19/2006.

Type of Tax	Tax Period	Amount Owed
941	3/31/2006	19601.89
941	6/30/2006	17907.96

Appendix H

The lien attaches to all property you currently own and to all property may acquire in the future. It also may damage your credit rating hinder your ability to obtain additional credit.

You have a right to a hearing with us to appeal this collection action and to discuss your payment method options. To explain the different collection appeal procedures available to you, we've enclosed Publication 1660, Collection Appeal Rights.

If you want to request a hearing, please complete the enclosed form 12153, Request for a Collection Due Process Hearing, and mail it to:

Internal Revenue Service
1 MONTVALE AVENUE
GROUP 11 COLLECTION
STONEHAM, MA 02180

You must request your hearing by 01/26/2007.

We'll issue a Certificate of Release of the Federal Tax Lien within 30 days after you pay the full amount owed. To get your current balance, contact the person whose name and telephone appear at the top of this letter.

Appendix H

OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF DIVISION COUNSEL
SMALL BUSINESS/SELF-EMPLOYED
10 CAUSEWAY STREET
ROOM 401
BOSTON, MA 0 2 2 2 2-1 0 6 1
(617) 565-7838
FAX: (617) 565-7894

February 22, 2010

CC:SB:1:BOS:1:NPChing
TL-14664-08L

Via United Parcel Service

Medical Practice Solutions, LLC
Carolyn Britton, Sole Member
10 Drummer Boy Way
Lexington, MA 02420

Reference: Medical Practice Solutions, LLC, Carolyn Britton, Sole Member
Docket No. 14664-08L

Dear Ms. Britton:

As required by this Court's January 29, 2010 Order, please find enclosed a proposed Supplemental Stipulation of Facts with attached unredacted Exhibits 1-J to 59-J. Also, please find enclosed a proposed Joint

Status Report. Please note that this Stipulation and Status Report must be filed with the Court by March 1, 2010. Thus, please contact me by this Thursday, February 25, 2010, so that we may discuss the Stipulation and Status Report. Thank you for your anticipated cooperation.

Sincerely,

FRANCES F. REGAN
Area Counsel
(Small Business/Self-Employed:Area 1)
/s/ Nina P. Ching
By: _____
Nina P. Ching
Attorney (Boston, Group 1)
(Small Business/Self-Employed)
T.C. Bar No. CN0133

Enclosures (2)
Proposed Stipulation of Facts and Copies of Exhibits 1-J to 60-J
Proposed Joint Status Report

Appendix H

[Letter 3172]

CERTIFIED MAIL: 7105 5678 7184 6181 6032
Letter Date : 12/26/2006

MAILED TO:
CAROLYN BRITTON
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915

Taxpayer Identification Number:
20-1906376

Contact Person:
LAURA MOORE

Employee Identification Number:
04-00504

Contact Telephone Number:
(781) 835-4250

CAROLYN BRITTON
100 CUMMINGS CTR STE 232C
BEVERLY, MA 01915

NOTICE OF FEDERAL TAX LIEN FILING AND YOUR RIGHT TO A HEARING UNDER IRC 6320

We filed a Notice of Federal Tax Lien on 12/19/2006.

Appendix H

Type of Tax	Tax Period	Amount Owed
941	3/31/2006	19601.89
941	6/30/2006	17907.96

The lien attaches to all property you currently own and to all property you may acquire in the future. It also may damage your credit rating and hinder your ability to obtain additional credit.

You have a right to a hearing with us to appeal this collection action and to discuss your payment method options. To explain the different collection appeal procedures available to you, we've enclosed Publication 1660, Collection Appeal Rights.

If you want to request a hearing, please complete the enclosed form 12153, Request for a Collection Due Process Hearing, and mail it to:

Internal Revenue Service
1 MONTVALE AVENUE
GROUP 11 COLLECTION
STONEHAM, MA 02180

You must request your hearing by 01/26/2007.

We'll issue a Certificate of Release of the Federal Tax Lien within 30 days after you pay the full amount owed. To get your current balance, contact the person whose name and telephone appear at the top of this letter.

Letter 3172(DO) (Rev.09-2006)

Appendix H

[Unnecessary details have been omitted]

PAGE NO-0001 IRS EMPLOYEE 6612122048
DATE REQUESTED PRINT DATE
03-12-2007 03-12-2007

TAXPAYER IDENTIFICATION NUMBER:
20-1906376

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY MA 01915-6126-234
BODC-SB BODCLC-S

FORM NUMBER: 941

TAX PERIOD: MAR 2006

--- ANY MINUS BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	19,621.89	
ACCRUED INTEREST:	1,138.28	AS OF 03-19-2007
ACCRUED PENALTY:	1,248.60	AS OF 03-19-2007
ACCOUNT BALANCE PLUS ACCRUALS:	22,008.77	
TAX PER TAXPAYER:	16,648.01	

Appendix H

05-01-2006	RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)
07-03-2006	PROCESSING –DATE

TRANSACTIONS

CODE	EXPLANATION	DATE	AMOUNT
150	RETURN FILED AND TAX ASSESSED 17141-161-80779-6	07-03-2006	16,648.01
186	FEDERAL TAX DEPOSIT PENALTY 20062508	07-03-2006	1,664.80
276	FAILURE TO PAY TAX PENALTY 20062508	07-03-2006	249.72
196	INTEREST ASSESSED 20062508	07-03-2006	206.96
186	FEDERAL TAX DEPOSIT PENALTY 200663008	08-07-2006	832.40
971	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE LEVY NOTICE ISSUED	12-12-2006	

Appendix H

CODE	EXPLANATION	DATE	AMOUNT
971	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE RETURN RECEIPT SIGNED	12-15-2006	
582	FEDERAL TAX LIEN	12-22-2006	
360	FEES AND COLLECTION COSTS	01-29-2007	20.00
960	RECEIVED POA/TIA	01-05-2007	
520	LEGAL /BANKRUPTCY SUIT PENDING	01-10-2007	
520	LEGAL /BANKRUPTCY SUIT PENDING	01-10-2007	
522	CORRECTION OF LEGAL BANKRUPTCY SUIT	01-10-2007	

Appendix H

PAGE NO-0002 IRS EMPLOYEE 6612122048
FORM NUMBER: 941 TAX PERIOD: JUNE 2006

--- ANY MINUS BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	17,907.96	
ACCRUED INTEREST:	773.42	AS OF 03-19-2007
ACCRUED PENALTY:	766.80	AS OF 03-19-2007
ACCOUNT BALANCE PLUS ACCRUALS:	19,448.18	
TAX PER TAXPAYER:	18,434.58	

07-31-2006 RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)
079-04-2006 PROCESSING –DATE

TRANSACTIONS

CODE	EXPLANATION	DATE	AMOUNT
150	RETURN FILED AND TAX ASSESSED 34141-154-55580-6	09-04-2006	18,434.58
650	FEDERAL TAX DEPOSIT	06-14-2006	3,098.48-
186	FEDERAL TAX DEPOSIT PENALTY 20063408	09-04-2006	1,355.61

Appendix H

CODE	EXPLANATION	DATE	AMOUNT
276	FAILURE TO PAY TAX PENALTY 20063408	09-04-2006	153.36
196	INTEREST ASSESSED 20063408	09-04-2006	118.09
186	FEDERAL TAX DEPOSIT PENALTY 20063408	10-09-2006	766.80
971	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE LEVY NOTICE ISSUED	12-12-2006	
971	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE RETURN RECEIPT SIGNED	12-15-2006	
582	FEDERAL TAX LIEN	12-22-2006	
650	FEDERAL TAX DEPOSIT	07-15-2006	1,186.71-
960	RECEIVED POA/TIA	01-05-2007	
186	FEDERAL TAX DEPOSIT PENALTY 20063408	09-04-2006	178.00

Appendix H

CODE	EXPLANATION	DATE	AMOUNT
87	FEDERAL TAX DEPOSIT PENALTY ABATED	09-04-2006	178.00-
520	LEGAL/ BANKRUPTCY SUIT PENDING	01-10-2007	
520	LEGAL/ BANKRUPTCY SUIT PENDING	01-10-2007	
652	CORRECTION OF FEDERAL TAX DEPOSITI	07-15-2006	1,186.71
186	FEDERAL TAX DEPOSIT PENALTY 20070508	02-12-2007	
522	CORRECTION OF LEGAL/ BANKRUPTCY SUIT	01-10-2007	

Appendix H

United States Postal Service

Track & Confirm

Search Results

Label/Receipt Number: 7105 5678 7184 6181 6032
Status: Delivered

Your item was delivered at 5:36 pm on December 30, 2006 in ANDOVER, MA 05501. The item was signed for by J AUGUSTIN. A proof of delivery record may be available through your local Post Office for a fee.

Additional information for this item is stored in files offline.

http://trkcnfrm1.smi.usps.com/PTSInternetWeb/InterLabelInquiry.do 4/4/2007

Appendix II

[Unnecessary details have been omitted]

Station Name: MAH003WA2840638
Date: 2/16/2010 Time: 11:37:52 AM

ENMOD 20-1906376 NM-CTRL>MEDI

PRIMARY-NAME>	MEDICAL PRACTICE SOLUTIONS LLC
SORT-NAME>	BRITTON CAROLYN SOLE MBR
STREET-OR-FORGN-CTY-ZIP>	100 CUMMINGS CTR STE 232C
CTY/STA/ZIP-OR-FORGN-CTRY>	BEVERLY MA 019156126234
LOCATION-STREET-ADDR>	100 CUMMINGS CTR
LOCATION-CTY/STA/ZIP>	BEVERLY,MA,01915

ENTITY-ESTAB-DT>112004

XREF-TIN/ITIN>11-3733909

LEVY SRCE PRESENT
FILING REQUIREMENTS 941>01 940>1

INTERNAL REVENUE SERVICE
A 1 -T1-GROUP 113
FEB 16 2010
TAXPAYER ASSISTANCE CENTER
MANCHESTER, NH 03101

Appendix H

[Unnecessary details have been omitted]

Station Name: MAH003WA2840638
Date: 2/16/2010 Time: 11:39:02 AM

ENMOD 11-3733909 NM-CTRL>BRIT

XREF-SSN>[redacted]

PRIMARY-NAME>	CAROLYN P BRITTON
SORT-NAME>	MEDICAL PRACTICE SOLUTIONS LLC
STREET-OR-FORGN-CTY-ZIP>	10 DRUMMER BOY WAY
CTY/STA/ZIP-OR-FORGN-CTRY>	LEXINGTON MA 024201220106
LOCATION-STREET-ADDR>	100 CUMMINGS CTR
LOCATION-CTY/STA/ZIP>	BEVERLY,MA,01915

ENTITY-ESTAB-DT>112004

INTERNAL REVENUE SERVICE
A 1 -T1-GROUP 113
FEB 16 2010
TAXPAYER ASSISTANCE CENTER
MANCHESTER, NH 03101

APPENDIX I – SELECTED APPENDIX PAGES FROM THE A26-A442 RANGE, FILED IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Medical Practice Solutions — Exhibit B
The innovation experts — 14668-07L

August 9, 2006

INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0149

Dear IRS:

I am writing in response to your letter to me dated August 7, 2006. For your reference, a copy of the letter is attached.

Around 10:30 am this morning, my Husband Randy A. Britton JD-MBA, CPA, an authorized agent, spoke with Mr. Coleman, ID 1752615, on the telephone, about setting up a payment plan.

However, Mr. Coleman advised Randy to write a letter to the Cincinnati IRS Office requesting that a payment plan be set up because the IRS cannot make a payment plan over $10,000, via telephone.

Please consider this letter a written request to set up a payment plan of the maximum duration and the minimum due now, permitted by law.

Thank you.

/s/ Carolyn Britton
Carolyn Britton
President and CEO
100 Cummings Center Suite 232C I Beverly MA, 01915

Appendix I

UNITED STATES TAX COURT
Washington, DC 20217

Medical Practice Solutions, LLC, Carolyn Britton	)	
Petitioner,	)	Docket No. 14668-07L
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER

This matter is before the Court on respondent's Motion for Summary Judgment filed December 28, 2007. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated May 25, 2007, upholding the filing of a Notice of Federal Tax Lien and a proposed levy collection action for unpaid Federal employment tax for the periods ending March 31, 2006, and June 30, 2006.[1]

Carolyn Britton resided in Lexington, Massachusetts, when the petition in this case was filed.

Pursuant to notice, this case was called from the calendar for the Motions Session of the Court at Washington, D.C., on February 20, 2008, for hearing on respondent's motion for summary judgment. Counsel for respondent appeared and argued in support of respondent's motion. There was no appearance by or on behalf of petitioner, and petitioner did not file a statement under Rule 50(c).

We may grant summary judgment only if there are no genuine issues of material fact. Naftel v.

Commissioner, 85 T.C. 527, 529 (1985). Respondent, as the moving party, bears the burden of proving that no genuine issue exists as to any material fact and that respondent is entitled to judgment as a matter of law.

---

[1] Section references are to the Internal Revenue Code.

See FPL Group. Inc. & Subs. v. Commissioner, 115 T.C. 554 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, supra. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. See FPL Group, Inc. & Subs. v. Commissioner, supra; Bond v. Commissioner, supra; Naftel v. Commissioner, supra.

Respondent has not convinced us that no genuine issue exists as to any material fact. An example of material facts remaining in dispute are those pertaining to petitioner's attempt to enter into an installment agreement before and during the hearing under section 6330. Respondent concedes that respondent erroneously believed that petitioner was not eligible for an installment agreement and advised petitioner of that belief. The extent to which that error affected the proceedings under section 6330 is unclear.

Also, petitioner contends that no notice of lien was given to petitioner within 5 days of their filing, or later, as required by section 6320. In response, respondent contends that petitioner was able to raise the issue of the lien filing at the section 6330

hearing. However, the record is silent as to how the parties dealt with this issue at the section 6330 hearing.

There are genuine issues of material fact in this case, and we conclude that respondent is not entitled to judgment as a matter of law as provided herein.

Premises considered, it is

ORDERED that respondent's Motion for Summary Judgment filed December 28, 2007, is denied.

/s/ Peter J. Panuthos
Peter J. Panuthos
Chief Special Trial Judge

Dated: Washington, D.C.
February 22, 2008

Appendix I

[Unnecessary details have been omitted]

MS. GREGORY: I also wanted to clarify that when I refer to the Petitioner, I am referring to Carolyn Britton. "Medical Practice Solutions, LLC," also appears on the caption, but the Service has only issued a notice of determination to Carolyn Britton. The proposed collection action is against her, as an individual, and there is no collection action proposed against the LLC.

THE COURT: Well, all of the documents, though, are directed to Medical Practice Solutions, LLC.

MS. GREGORY: The assessment documents were against the LLC, but the Notice of Intent To Levy and Notice of Your Right to a Hearing, and the Notice of Federal Lien Filing, and the Notice of Determination were issued to Carolyn Britton.

THE COURT: The assessment was against Carolyn Britton. Is that what you said?

MS. GREGORY: No. This is a single-member LLC that was not elected to be treated as a corporation. So, pursuant to the regulations, the assessments are made against the LLC because it has its own EIN number, but then the Service does not have the authority to collect from the LLC's assets. We only collect from the sole member's assets.

THE COURT: The assessment is made in the name of the LLC.

MS. GREGORY: Yes.

THE COURT: And the collection is made against the individual.

MS. GREGORY: Yes.

THE COURT: So the liens and levies are made against the individual.

MS. GREGORY: Yes.

THE COURT: And what's the authority for that?

MS. GREGORY: It is Notice 99-6, which was 1993-3, IRB-12. It's the regulations under Section

7701. They describe how the Service makes these assessments and collects when it is a sole-member LLC that's a disregarded entity.

Heritage Reporting Corporation
(202) 628-4888

6

THE COURT: It's just interesting. You may well be right. It just seems to me unusual to have an assessment against -- the actual assessment is made against the entity, but the collection and the lien and the levy is against the individual, and that's what you've indicated.

MS. GREGORY: Right.

THE COURT: Okay.

MS. GREGORY: There is also a case that describes this. It's Littriello v. United States, 484 F.3d 372. This is a Sixth Circuit case in 2007. It explains the regulations, and it says that this assessment and then collection from the member is valid.

THE COURT: Is that the case that cert.

was
just denied this morning or yesterday?
MS. GREGORY: I knew they had asked for
cert. I have not seen that.
THE COURT: I believe that it was denied
early this morning or late yesterday. Okay.
All right. Why don't you go ahead with your
presentation?
MS. GREGORY: Thank you, Your Honor. At
issue are employment taxes for two periods, ending
March 31, 2006, and June 30, 2006.

Appendix I

UNITED STATES TAX COURT
Washington, DC 20217

Medical Practice Solutions, LLC, Carolyn Britton	)	
Petitioner,	)	Docket No. 14668-07L
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

STIPULATION OF FACTS

In accordance with Tax Court Rule 91(c), the below-signed parties agree to this Stipulation of Facts pursuant to the general terms of this preamble unless specifically expressed otherwise. All stipulated exhibits shall be considered authentic. All copies shall be considered electronic reproductions of the originals and shall be treated as if originals. Either party has the right to object to the admission of any such facts and exhibits in evidence on the grounds of relevancy and materiality. The truth of assertions within stipulated exhibits may be rebutted or corroborated with additional evidence.

1. At the time the petition was filed in this case, Petitioner Carolyn Britton, resided in Lexington, Massachusetts 02420.

2. For the taxable periods ending March 31, 2006 and June 30, 2006, Medical Practice Solutions, LLC was a single member limited liability company reg-

istered in the Commonwealth of Massachusetts with its principal office located at 100 Cummings Center, Suite 232C, Beverly, Massachusetts 01915.

3. During the taxable periods ending March 31, 2006 and June 30, 2006, Carolyn Britton was the sole member of Medical Practice Solutions, LLC [hereinafter "Medical"].

4. Attached hereto and marked as Exhibit 1-J is a certified copy of respondent's On-Line Entity transcript of account for Medical.

5. Medical filed its Form 941 (FICA) employment tax return for the taxable period ending March 31, 2006 on May 1, 2006 with a reported tax liability in the amount of $16,648.01. Said Form 941 only listed Medical as the name of the taxpayer Attached hereto and marked as Exhibit 2-J is a copy of Form 4340 (Certificate of Assessments, Payments, and other Specified Matters), under seal, for the taxable period ending March 31, 2006 (Form 941) for Medical.

6. Medical filed its Form 941 (FICA) employment tax return for the taxable period ending June 30, 2006 on July 31, 2006 with a reported,, tax liability in the amount of $18,434.58. Said Form 941 only listed Medical as the name of the taxpayer. Attached hereto and marked as Exhibit 3-J is a copy of Form 4340 (Certificate of Assessments, Payments, and other Specified Matters), under seal, for the taxable period ending June 30, 2006 (Form 941) for Medical.

7. For the taxable year 2006, Carolyn Britton reported the income and expenses for Medical Practice Solutions, LLC on a Schedule C as part of her 2006 income tax return.

8. Paragraph 8 was deleted by the parties.

9. Attached hereto and marked as Exhibit 5-R is the Declaration of Michael G. Blais, with attached Exhibits A through L, made under penalties of perjury.

10. Attached hereto and marked as Exhibit 6-J is a copy of the Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated May 25, 2007 sent by respondent to petitioner.

The parties agree to this Stipulation of Facts.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

By:
/s/ LOUISE R. FORBES

LOUISE R. FORBES
Attorney (Small
Business/Self-Employed)
Tax Court Bar No. FL0222
Tip O'Neill Building
10 Causeway Street, Room 401
Boston, MA 02222-1061

Telephone: (617) 565-7860

Date: 10/20/08

/s/ CAROLYN BRITTON

CAROLYN BRITTON
Petitioner
10 Drummer Boy Way
Lexington, MA 02420
Telephone: (781) 640-5239

Date: 10/20/08

Appendix I

Exhibit 1-J
Docket No 14668-07L

United States of America
Department of the Treasury
Internal Revenue Service

Date: OCT 1 2008

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is a true copy of the Inquiry On-Line Entity transcript of account of Medical Practice Solutions, LLC, EIN: 20-1906376, consisting of 1 page under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By the direction of the Secretary of the Treasury:

/s/ Brian Gingras

Brian Gingras
Senior Disclosure specialist
Boston Office

Form 2866 (Rev. 9-97)

Appendix I

[Unnecessary details have been omitted]

Station Name: BOS032MA2806865
Date: 9/26/2008 Time: 8:58:23 AM

INOLES20-1906376
CURRENT BMF N/C MEDI

CURRENT BMF NAMELINE
MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY,MA, 01915-6126 234

LOCATION ADDRESS
100 CUMMINGS CTR
BEVERLY MA 01915

ESTABLISHMENT YEAR/MONTH 200411

FILING REQUIREMENTS
941-01 940-1

Appendix I

Exhibit 2-J
Docket No. 14668-07L

United States of America
Department of the Treasury
Internal Revenue Service

Date: November 30, 2007

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is an original Certificate of Assessments, Payments, and Other Specified Matters (F4340) for Employer's Quarterly Federal Tax Return (F941), captioned Medical Practice Solutions LLC Britton Carolyn Sole MBR, Employer Identification Number 20-1906376, for the tax period ending March 31, 2006, consisting of four (4) pages under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By the direction of the Secretary of the Treasury:

/s/ DAVID J. LAZARUS
David J. Lazarus
Resident Agent in Charge
CI Delegation Order 18

Form 2866 (Rev. 9-97)

Appendix I

[Unnecessary details have been omitted]

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

EIN/SSN: 20-1906376

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR

TYPE OF TAX: EMPLOYER'S QUARTERLY FEDERAL TAX RETURN

FORM: 941 TAX PERIOD MAR 2006

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
05-01-2006	RETURN FILED 17141-161-80779-6	16,648.01		07-03-2006
	FEDERAL TAX DEPOSIT PENALTY	1,664.80		07-03-2006
	FAILURE TO PAY TAX PENALTY	249.72		07-03-2006
	INTEREST ASSESSED	206.96		07-03-2006
	FEDERAL TAX DEPOSIT PENALTY	832.40		08-07-2006

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
10-02-2006	MODULE BLOCKED OR RELEASED FROM FEDERAL PAYMENT LEVY PROGRAM			
09-23-2006	REVERSAL OF MODULE BLOCKED FROM FEDERAL PAYMENT LEVY PROGRAM			
10-16-2006	MODULE IN FEDERAL PAYMENT LEVY PROGRAM			
12-12-2006	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE LEVY NOTICE ISSUED			
12-15-2006	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE RETURN RECEIPT SIGNED			

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
12-22-2006	FEDERAL TAX LIEN			
01-29-2007	FEES AND COLLECTION COSTS	20.00		
01-05-2007	RECEIVED POA/TIA			
01-10-2007	COLLECTIONS WORKING CASE			
01-10-2007	COLLECTIONS WORKING CASE			
01-10-2007	LEGAL SUIT PENDING			
01-10-2007	LEGAL SUIT PENDING			
02-05-2007	MODULE REVERSED OUT OF FEDERAL PAYMENT LEVY PROGRAM			
01-10-2007	CORRECTION OF LEGAL SUIT PENDING			

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
07-03-2006	Statutory Notice of Balance Due			
08-07-2006	Statutory Notice of Intent to Levy			
02-12-2007	Annual Notice of Balance Due			

Form 4340 (rev. 01-2002)

BALANCE 19,621.89

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF TAX PAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND ADVANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BYTHE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUTS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

Appendix I

SIGNATURE OF CERTIFYING OFFICER:
/s/ Margaret Brouillard-Martin
PRINT NAME: Margaret Brouillard-Martin
TITLE: Supervisory Investigative Analyst
DELEGATION ORDER: CI Delegation # 18

LOCATION: INTERNAL REVENUE SERVICE
ANDOVER, MA

ACCOUNT STATUS DATE 11/27/2007

Form 4340 (rev. 01-2002)

Appendix I

Exhibit 3-J
Docket No. 14668-07L

United States of America
Department of the Treasury
Internal Revenue Service

Date: November 30, 2007

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is an original Certificate of Assessments, Payments, and Other Specified Matters (F4340) for Employer's Quarterly Federal Tax Return (F941), captioned Medical Practice Solutions LLC Britton Carolyn Sole MBR, Employer Identification Number 20-1906376, for the tax period ending June 30, 2006, consisting of four (4) pages under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By the direction of the Secretary of the Treasury:

/s/ DAVID J. LAZARUS
David J. Lazarus
Resident Agent in Charge
CI Delegation Order 18

Form 2866 (Rev. 9-97)

Appendix I

[Unnecessary details have been omitted]

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

EIN/SSN: 20-1906376

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR

TYPE OF TAX: EMPLOYER'S QUARTERLY FEDERAL TAX RETURN

FORM: 941 TAX PERIOD JUNE 2006

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
07-31-2006	RETURN FILED 34141-154-55580-6	18434.58		09-04-2006
06-14-2006	FEDERAL TAX DEPOSIT		3098.48	
	FEDERAL TAX DEPOSIT PENALTY	1355.61		09-04-2006
	FAILURE TO PAY TAX PENALTY	153.36		09-04-2006
	INTEREST ASSESSED	118.09		09-04-2006

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
	FEDERAL TAX DEPOSIT PENALTY	766.80		10-09-2006
12-11-2006	MODULE IN-FEDERAL PAYMENT LEVY PROGRAM			
12-12-2006	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE LEVY NOTICE ISSUED			
12-15-2006	INTENT TO LEVY COLLECTION DUE PROCESS NOTICE RETURN RECEIPT SIGNED			
12-22-2006	FEDERAL TAX LIEN			
07-05-2006	FEDERAL TAX DEPOSIT		1186.71	
01-05-2007	RECEIVED POA/TIA			

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
	FEDERAL TAX DEPOSIT PENALTY	178.00		09-04-2006
09-04-2006	FEDERAL TAX DEPOSIT PENALTY ABATED	-178.00		
01-10-2007	COLLECTIONS WORKING CASE			
01-10-2007	COLLECTIONS WORKING CASE			
01-10-2007	LEGAL SUIT PENDING			
01-10-2007	LEGAL SUIT PENDING			
07-15-06	CORRECTION OF FEDERAL TAX DEPOSIT 941 20-1906376		-1186.71	
02-05-2007	MODULE REVERSED OUT OF FEDERAL PAYMENT LEVY PROGRAM			

Appendix I

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT	PAYMENT	ASSESSMENT DATE
	FEDERAL TAX DEPOSIT PENALTY	178.00		02-12-2007
01-10-2007	CORRECTION OF LEGAL SUIT PENDING			
09-04-2006	Statutory Notice of Balance Due			
10-03-2006	Statutory Notice of Intent to Levy			
01-29-2007	Statutory Notice of Balance Due			
02-12-2007	Statutory Notice of Balance Due			

Form 4340 (rev. 01-2002)

BALANCE 17,907.96

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF TAX PAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND AD-

Appendix I

VANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BYTHE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUTS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

SIGNATURE OF CERTIFYING OFFICER:
/s/ Margaret Brouillard-Martin
PRINT NAME: Margaret Brouillard-Martin
TITLE: Supervisory Investigative Analyst
DELEGATION ORDER: CI Delegation # 18

LOCATION: INTERNAL REVENUE SERVICE
ANDOVER, MA

ACCOUNT STATUS DATE 11/27/2007

Form 4340 (rev. 01-2002)

Appendix I

[Unnecessary details have been omitted]

Department of the Treasury
Internal Revenue Service
PO Box 480
Holtsville NY 11742-0480

Exhibit D
14668-07L

In reply refer to: 0165657212
Sep. 07, 2006 LTR 2272C
20-1906376 200603 01 000

MEDICAL PRACTICE SOLUTIONS LLC
BRITTON CAROLYN SOLE MBR
100 CUMMINGS CTR STE 232C
BEVERLY MA 01915-6126234

Taxpayer Identification
Number: 20-1906376
Tax Period(s): Mar. 31, 2006

Dear Taxpayer:
Thank you for your correspondence dated Aug. 09, 2006, requesting to make an arrangement to resolve your account with the IRS with an installment agreement.

We can't consider your request for an installment agreement because we have no record of receiving your tax return(s) for the tax period(s) shown below. If you filed the return(s), please send us a complete copy of each tax return in the enclosed envelope. Be sure to re-sign each tax return in ink.

Appendix I

Form	Tax Period
941	Dec. 31, 2004
941	June 30, 2005
940	Dec. 31, 2004

If you have not filed your return(s), please do so now. Send your completed and signed form(s) within 30 days from the • date of this letter. If you need help preparing your tax return(s), please call 1-800-829-0115. After you file your delinquent tax return(s) and if you still owe taxes, we can reconsider your installment agreement request. Please complete the enclosed Form 433-D, Installment Agreement, and enclose it with your return(s) when you mail them. Include all tax year(s) with a balance due on Form 433-D. In the meantime, while you are preparing your tax return(s), we encourage you to make as many payments on your taxes as you can to lower penalty and interest charges. When you make a payment, always include your Stcial Security or Employer Identification Number, tax year(s), tax form(s), and a daytime telephone number on your check or money order. Make your check or money order payable to the United States Treasury.

Sincerely yours,
/s/ NOREEN C. BAVARO
Noreen Bavaro, Operations Mgr.
Collections

Enclosures:
Copy of this letter
Envelope
Form 433-D

Appendix I

Internal Revenue Service
DEPARTMENT OF THE TREASURY
e-services

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-30-2009
Response Date: 11-30-2009
Tracking Number: 100056461262

FORM NUMBER: 941

TAX PERIOD: Mar. 31, 2006

TAXPAYER IDENTIFICATION NUMBER: 11-3733909

Requested Data Not Found.

This Product Contains Sensitive Taxpayer Data

INTERNAL REVENUE SERVICE
AI-TI-GROUP 113
NOV 3 0 2009
TAXPAYER ASSISTANCE CENTER
MANCHESTER, NH 03101

Appendix I

Internal Revenue Service
DEPARTMENT OF THE TREASURY
e-services

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-30-2009
Response Date: 11-30-2009
Tracking Number: 100056461262

FORM NUMBER: 941

TAX PERIOD: Jun. 30, 2006

TAXPAYER IDENTIFICATION NUMBER: 11-3733909

Requested Data Not Found.

This Product Contains Sensitive Taxpayer Data

INTERNAL REVENUE SERVICE
Al-TI-GROUP 113
NOV 3 0 2009
TAXPAYER ASSISTANCE CENTER
MANCHESTER, NH 03101